

No. 3097

United States
Circuit Court of Appeals
For the Ninth Circuit

CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY,

Plaintiff in Error,

vs.

BARTHOLOMEW CHAMBERLAIN,

Defendant in Error.

Transcript of the Record

FILED
DEC 17 1911
F. D. MONCKTON
CL

*Upon Writ of Error from the United States District
Court for the District of Idaho,
Northern Division.*

No.

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INDEX TO BILL OF EXCEPTIONS

PLAINTIFF'S CASE IN CHIEF

<i>Witnesses.</i>	<i>Page</i>
CHAMBERLAIN, BARTHOLOMEW—Direct.....	38
Cross-Examination	57
Re-Direct	80
LA BRANCH, FRANK—Direct.....	83
Cross-examination	88
PLATT, OWEN D.—Direct.....	96
Cross-examination	103
McDOWELL, CHARLES E.—Direct.....	104
Cross-examination	108
Re-Direct	114
Recross-examination	115

PLAINTIFF'S REBUTTAL

CHAMBERLAIN, BARTHOLOMEW—Direct	172
Cross-examination	175
BOUTELLIER, ADOLPH—Direct	176
GLOVER, JOHN H.—Direct.....	177
Cross-examination	179

DEFENDANT'S CASE IN CHIEF

<i>Witnesses:</i>	
HODGES, KENNETH R.—Direct.....	116
Cross-examination	125
ERNSTER, CHARLES F.—Direct.....	135
Cross-examination	142
MARSTON, MRS. MARG.—Direct.....	144
Cross-examination	149
Re-Direct	152
GREENWOOD, EDWIN—Direct	153
Cross-examination	159
Re-Direct	162
Recross-examination	162
McCARTHY, HENRY H.—Direct.....	164
Cross-examination	165
Re-Direct	167
KIRKPATRICK, WILLIAM—Direct	167
Cross-examination	170
Re-Direct	171

INDEX

	Page
Answer	20
Assignments of Error.....	196
Bill of Exceptions.....	37
Bond on Writ of Error.....	203
Citation	209
Complaint	13
Clerk's Certificate	211
Defendant's Motion for Instructed Verdict.....	180
Instructions of the Court to the Jury.....	181
Judgment	28
Notice of Petition for Removal.....	7
Order	34
Order Removing Cause to United States District Court	12
Order to Transmit Original Exhibits.....	205
Order Allowing Writ of Error.....	201
Order Settling Bill of Exceptions.....	193
Petition for Removal.....	8
Petition for Writ of Error.....	195
Praecipe for Transcript.....	206
Petition for New Trial.....	30
Removal Bond	11
Return to Writ of Error.....	210
Stipulation as to Supersedeas Bond.....	203
Stipulation granting until Sept. 1 to file and serve Bill of Exceptions.....	37
Stipulation granting until Aug. 15 to file and serve Bill of Exceptions.....	36
Verdict	28
Writ of Error.....	207

Names and Addresses of Attorneys of Record

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608 White Bldg., Seattle, Washington.

J. F. AILSHIE, Esq.,

Coeur d'Alene, Idaho.

Attorneys for Plaintiff in Error.

NORRIS & YATES,

St. Maries, Idaho.

CORKERY & CORKERY,

540 Rookery Bldg., Spokane, Washington.

Attorneys for Defendant in Error.

*In the District Court of the Eighth Judicial District
of the State of Idaho, in and for County
of Benewah.*

BARTHOLOMEW CHAMBERLAIN,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
ROAD COMPANY, a Corporation,

Defendant.

NOTICE OF PETITION FOR REMOVAL.

To the above named plaintiff, BARTHOLOMEW
CHAMBERLAIN, and to NORRIS & YATES, St.
Maries, Idaho, and CORKERY & CORKERY,
Spokane, Washington, his Attorneys:

You and each of you are hereby notified that the
defendant, Chicago, Milwaukee & St. Paul
Railway Company, will, on the twenty-ninth
day of January, 1917, file in the above
named Court its petition for the removal of
said cause to the District Court of the United States
for the District of Idaho, Northern Division, sitting
in the city of Coeur d'Alene, Idaho, and that it will,
at the same time, make and file therewith a bond
with good and sufficient surety for the entering in
such District Court, within thirty days from the
filing of said petition of a certified copy of the rec-
ord in such suit and for the paying of all costs that
may be awarded by said District Court, if said Dis-

trict Court shall hold that said suit was wrongfully or improperly removed thereto.

GEO. W. KORTE,
608 White Building, Seattle, Wash.
J. F. AILSHIE,
Coeur d'Alene, Idaho.

Filed January 29, 1917.

Warren T. Shepperd, Clerk.

By C. B. Moon, Deputy.

(Title of Court and Cause.)

PETITION FOR REMOVAL.

The petition of the above named defendant, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, respectfully shows unto the Court:

That your petitioner, Chicago, Milwaukee & St. Paul Railway Company, was, at the time of the commencement of said suit and still is, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and was, at the time of the commencement of said suit, and still is, a citizen and resident corporation of said State; that its principal place of business is the city of Milwaukee in said State of Wisconsin; that the plaintiff, Bartholomew Chamberlain, was, at the time of the commencement of said suit, and still is, a citizen and resident of the State of Idaho; that the above entitled suit is brought by said plaintiff to recover of said petitioner the sum of Fifteen Thousand One Hundred and Fifteen (\$15,115) Dollars, as damages

for personal injuries alleged to have been caused him through the negligence of your petitioner; that said suit is wholly of a civil nature; that there is a controversy in said suit which is wholly between citizens of different states, and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000) Dollars,—all of which will more fully appear by the complaint in said suit, which is hereby referred to and made a part hereof; that your petitioner disputes said claim and denies all liability thereon; that the time within which your petitioner is required by the laws of the State of Idaho and the rules and practice of said Court to answer and plead in said suit has not yet expired; that your petitioner desires to remove this suit before the trial thereof into the District Court of the United States for the proper district, and your petitioner offers and files herewith a bond with good and sufficient surety for its entering in said District Court within thirty days from the date of the filing of this petition, a certified copy of the record of this suit and for its paying all costs that may be awarded by said District Court, if said District Court shall hold that this suit has been improperly removed thereto.

WHEREFORE, your petitioner prays that said surety and bond be approved and accepted and that an order be entered removing said cause to the District Court of the United States for the District of Idaho, Northern Division, and that your petitioner be required to enter and file a copy of the record

herein in said District Court of the United States, as provided by law, and that this Court proceed no further in said cause.

GEO. W. KORTE,
608 White Building, Seattle, Wash.
J. F. AILSHIE,
Coeur d'Alene, Idaho.
Attorneys for Defendant.

State of Washington,
County of King,—ss.

George W. Korte, being first duly sworn, on oath says:

That he is the Attorney for the petitioner, Chicago, Milwaukee & St. Paul Railway Company, in the foregoing action; that he is authorized to make and execute this petition and does so on behalf of said petitioner; that he has read the foregoing petition, knows the contents thereof, and that the statements and allegations therein contained are true.

GEO. W. KORTE,

Subscribed and sworn to before me this 20th day of January, A. D. 1917.

(N. P. Seal)

M. C. MUMFORD,
Notary Public in and for the State of Washington,
residing at Seattle, therein.

Filed January 29, 1917.

Warren T. Shepperd, Clerk,
By C. B. Moon, Deputy.

(Title of Court and Cause.)

REMOVAL BOND.

KNOW ALL MEN BY THESE PRESENTS, that we, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, a corporation, as *Principal*, and the NATIONAL SURETY COMPANY, of New York, as *Surety*, are held and firmly bound unto BARTHOLOMEW CHAMBERLAIN, the plaintiff in the above entitled action, in the penal sum of Five Hundred (\$500) Dollars, lawful money of the United States, to be paid to the plaintiff, his heirs, executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 19th day of January, 1917.

WHEREAS, the above entitled suit was brought on or about the 12th day of January, 1917, in the District Court of the Eighth Judicial District of the States of Idaho for the County of Benewah, by the plaintiff against the above named defendant, and is now pending in said State Court, and is removable into the District Court of the United States for the District of Idaho, Northern Division, and the said defendant, Chicago, Milwaukee & St. Paul Railway Company has petitioned said State Court for said removal.

NOW, THEREFORE, if the said defendant, Chicago, Milwaukee & St. Paul Railway Company, shall enter in the District Court of the United States for

the District of Idaho, Northern Division, within thirty (30) days from the date of the filing of the petition for removal, a certified copy of the record in said suit, and shall well and truly pay all the costs that may be awarded by said District Court, if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY,

By Geo. W. Korte, its Attorney.

NATIONAL SURETY COMPANY,

By L. H. Woolfolk,

Resident Vice-President.

(Seal of Surety Co.)

E. P. Welch,

Resident Assistant Secretary.

Filed January 29, 1917.

Warren T. Shepperd, Clerk,

By C. B. Moon, Deputy.

(Title of Court and Cause.)

ORDER REMOVING CAUSE TO UNITED
STATES DISTRICT COURT.

Upon reading the petition and bond for the removal of the above entitled suit and the whole thereof into the District Court of the United States for the District of Idaho, Northern Division, heretofore filed in the above entitled Court, and finding the said petition and bond sufficient in all respects, as pro-

vided by laws relating to the removal of causes from the State Court to the District Court of the United States, it is

ORDERED, that the said petition and bond be approved and accepted, and that the said suit and the whole thereof be, and the same is hereby, removed to the District Court of the United States for the District of Idaho, Northern Division, and the jurisdiction of this Court over said suit and the whole thereof be, and the same is hereby surrendered to the said United States Court, and that this Court proceed no further with said suit or any part thereof; that said defendant, Chicago, Milwaukee & St. Paul Railway Company, cause a certified copy of the record in said suit to be entered and filed in said United States Court within the time provided by law.

Signed in open Court this 29th day of January,
A. D. 1917.

JOHN M. FLYNN, Judge.

Filed January 30, 1917.

Warren T. Shepperd, Clerk.

(Title of Court and Cause.)

COMPLAINT.

Comes now the plaintiff and for his cause of action against the defendant alleges:

I.

That the defendant is and at all times herein mentioned has been, a corporation duly organized and

existing under and by virtue of the laws of the State of Wisconsin, and has filed its articles of incorporation with the Secretary of State of the State of Idaho, and has been and is doing business within the said State and maintains an office and transacts business in the County of Benewah of said State.

II.

That the defendant does now, and at all times hereinafter mentioned, owned, maintained and operated in the State of Idaho, a railway system as a common carrier of passengers for hire and in connection therewith, and for a long time prior to October 1st, 1916, owned, maintained and operated a regular depot and station at the town of Herrick, Idaho, together with a platform in connection with said depot for the use and convenience of passengers upon the trains thereof. And that said station, depot and platform were used for receiving and discharging passengers to and from the trains of defendant and was generally used by the public for such purpose; that said depot and platform at said point were constructed between a siding joining the main line just west of said depot and the main line at which points the tracks were elevated above the natural lay of the ground about ten (10) feet, and that said depot building was constructed upon posts about ten feet high, and the platform in connection therewith extended from said depot building proper out to the main line, a distance of about eleven feet; that on the west side of said depot building the platform was

extended from the main line to the said track for the purpose of transferring freight and baggage from the main line to said side track and completely bridged the low land between the side track and main line on the west side of said depot; that on or about the 1st day of October, 1916, defendant removed said depot building and that portion of the platform west of said building from said station to some other point along its line, but left the platform extending from said depot building to the main line, being about eleven feet wide and eighty feet long, and that on the side of said platform where it formerly joined said depot building it was elevated above the natural lay of the ground about ten feet high and that said ground was thickly covered with rocks and boulders and logs; that after moving said depot building defendant owned, maintained and operated a regular station at said town of Herrick, Idaho, and sold tickets to said point from various points along its line, and used, maintained and operated said platform for the use and convenience of passengers upon its trains, and that said platform was, after the removal of said depot building used for receiving and discharging passengers and their baggage to and from its trains, and was generally used by the public for the purpose of boarding and alighting from the trains of the defendant.

III.

That upon the 15th day of November, A. D. 1916, the plaintiff, as a passenger and intending to board westbound train, operated through said station by

the defendant at about 5:30 or 6:00 p. m., waited as such passenger upon said platform for said train to make its regular stop.

IV.

That the defendant negligently and carelessly failed to build and maintain any guard rail around said platform after removing its said depot building, and that upon said 15th day of November, A. D. 1916, negligently and carelessly failed to maintain any railing or guard about the edge of said platform to prevent persons properly in the use of said platform from falling said distance of ten feet to the ground below, and that defendant negligently and carelessly failed to maintain any light on or about said station and platform, and left the same dark. That upon said day the plaintiff, while such passenger, as aforesaid, and on account of the unguarded and unlighted condition of said platform and station, fell from the said platform a distance of ten feet or more to the ground below, injuring him as hereinafter set out. That it was necessary and proper, in order to make said platform safe to passengers and others in the use thereof, to maintain the same in a safe condition, and to maintain some proper guard or railing about the said platform, and especially at the arrival of said train, which was in the dark, to keep the same well lighted so that passengers could safely and properly use the same, but that the defendant negligently and carelessly failed to maintain a light and left the same dark upon the said day.

V.

That in falling, as aforesaid, the plaintiff was injured as follows: Two of his ribs were broken loose from his breast bone on the right side by striking a log or rock with his side, and plaintiff struck with such force that said ribs were broken again near where they join the back bone; that the right shoulder of plaintiff was dislocated and the muscle and tendons thereof badly wrenched and sprained; that plaintiff's head struck a rock or log, causing a cut above the right eye; that plaintiff was rendered unconscious by reason of said injuries, so that he laid exposed in said condition upon a cold night for a period of about an hour before he was discovered and taken to a place where he could be cared for, and remained unconscious until about 3:00 or 4:00 o'clock the next morning; that such blow on his side and the exposure of plaintiff while lying in such unconscious condition as aforesaid, caused an injury to the right lung of plaintiff and the same to become highly inflamed to such a condition that he coughed up and discharged therefrom pus and matter continuously from the 16th day of November, A. D. 1916, to about the 2nd day of December, 1916, at which time he was able to leave the hospital where he was taken when injured, and that said right lung is affected and injured, and as plaintiff is informed and believes and therefore alleges the fact to be the said injury to said lung is of a permanent nature; that by reason of the injuries aforesaid, and the condition of plaintiff's lung as aforesaid, he was com-

pelled to cough almost continuously from the time of said injury up until December 2nd, 1916, and on account of injury to plaintiff's ribs the act of coughing was extremely painful, and on account of said injuries as alleged aforesaid plaintiff suffered great pain and suffering and still continues to suffer great pain on account of the condition of said lung as aforesaid; that on account of said injuries plaintiff is wholly disabled and is unable to perform any labor, and his injuries are of a permanent and lasting nature.

VI.

That on account of the injuries aforesaid, plaintiff was taken to a hospital for treatment, and incurred an expense of seventy (\$70.00) Dollars for medical services, and forty-five (\$45.00) Dollars for hospital fees.

VII.

That prior to said injury, plaintiff had been and was a robust, healthy man and was earning and capable of earning at the rate of Three (\$3.00) Dollars per day.

VIII.

That by reason of said injury and negligence, as aforesaid, plaintiff has been damaged in the sum of Fifteen Thousand (\$15,000) Dollars, and in the further sum of One Hundred and Fifteen (\$115.00) Dollars medical fees, and hospital expenses.

WHEREFORE, plaintiff prays judgment against the defendant in the sum of Fifteen Thousand One

Hundred and Fifteen (\$15,115) Dollars and costs of suit.

NORRIS & YATES,

Attorneys for Plaintiff.

Postoffice address and residence, St. Maries, Idaho.

CORKERY & CORKERY,

Attorneys for Plaintiff.

Postoffice address and residence, Spokane, Washington.

State of Idaho,

County of Benewah,—ss.

Bertholomew Chamberlain, being first duly sworn, upon his oath says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof and that he believes the same to be true.

BERTHOLOMEW CHAMBERLAIN.

Subscribed and sworn to before me this 12th day of January, A. D. 1917.

William F. Sargent,

(Seal)

Notary Public.

Filed January 12, 1917.

Warren T. Shepperd, Clerk,

By C. B. Moon, Deputy.

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 677.

BARTHOLOMEW CHAMBERLAIN,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
ROAD COMPANY, a Corporation,

Defendant.

ANSWER.

Comes now the defendant and in answer to the complaint of plaintiff herein admits, denies and alleges as follows:

I.

Admits the allegations of paragraph One of plaintiff's complaint.

II.

In answer to paragraph Two of plaintiff's complaint, defendant denies that the defendant did on October 1st, 1916, or for a period of more than six months prior thereto, or at any time since said date, own or maintain or operate a regular or any depot or station at the town of Herrick, Idaho, together with a platform in connection with said depot, or at all, for the use and convenience of passengers upon the defendant's trains, or for any purpose, or that any depot or station or platform were used at said town of Herrick, Idaho, for receiving or discharging passengers to or from the train of defendant, or was generally, or at all, used by the public for such pur-

pose; denies that said alleged depot or platform at said point were constructed between a siding joining the main line just west of the said depot or the main line, or at all, at which points the tracks were elevated above the natural lay of the ground about ten feet, or any number of feet, or that said alleged depot building was constructed upon posts about ten, or any number of feet high, and denies that any platform in connection therewith extended from said alleged depot proper out to the main line a distance of about eleven feet, or any number of feet. Denies that on the west side of said alleged depot building any platform was extended from the main line to the side track, or otherwise, for the purpose of transferring freight or baggage from the main line to said side track, or for any purpose, or completely, or at all, bridged the low land between the side track and the main line on the west side of said depot; denies that on or about the 1st day of October, 1916, or at any time, the defendant removed said alleged depot building, or that portion of the platform west of said building, or any portion thereof, from said station to some, or any, other point along its line; denies that the defendant left the alleged platform, or any platform, extending from said alleged depot building to the main line, being about eleven feet wide or eighty feet long, or any width or length, or that on the side of said platform where the former joined said alleged depot building it was elevated above the natural lay of the ground about ten feet high, or any number of feet, or that said ground was thickly

covered, or covered at all, with rocks or boulders or logs; denies that after moving said alleged depot building defendant owned, maintained or operated a regular station, or any station, at said town of Herrick, Idaho, and denies that it sold tickets to said point from various, or any, points along its line or used, maintained or operated said platform for the use or convenience of passengers upon its trains, or at all, or that said platform was, after the alleged removal of said alleged depot building, used for receiving or discharging passengers or their baggage to or from its trains, or otherwise, or was generally used by the public for the purpose of boarding or alighting from the trains of the defendant, or at all.

III.

In answer to paragraph Three of plaintiff's complaint, defendant says that it has no information or belief upon the matters set forth therein sufficient to enable it to answer the allegations thereof, or any of the said allegations of paragraph Three, and that it bases its answer and denials on that ground and denies each and every of said allegations and each and every of the statements and allegations contained in the said paragraph numbered Three, and defendant denies that plaintiff went upon said alleged platform, or any platform, or to said alleged station, or any station, for the purpose of becoming a passenger on defendant's train or entering said train as a passenger, and denies that plaintiff waited at said alleged station for the purpose or with the intention of becoming a passenger on defendant's

train at any time on or about said 15th day of November, 1916.

IV.

In answer to paragraph Four of plaintiff's complaint, defendant denies that the defendant negligently or carelessly failed to build or maintain any guard rail around said alleged platform after removing its said depot building, or at any time, or that upon the said 15th day of November, A. D. 1916, or at any time, defendant negligently or carelessly failed to maintain any railing or guard about the edge of said platform to prevent persons properly, or otherwise, in the use of said platform from falling said distance of ten feet to the ground below, or any distance, and denies that the defendant negligently or carelessly failed to maintain any light on or about said alleged station or platform or left the same dark. Denies that upon said day, or any day, the plaintiff, while such alleged passenger, or at all, or on account of any unguarded or unlighted condition of said alleged platform or station, fell from said platform a distance of ten feet or any number of feet to the ground below, injuring him as set out in the complaint, or at all. Denies that it was necessary or proper in order to make said alleged platform safe to passengers or others in the use thereof to maintain the same in a safe condition or to maintain some, or any, guard or railing about the said alleged platform or especially on the arrival of said train to keep the same well lighted so that passengers could safely or properly use the same. Denies that the defendant

negligently or carelessly, or at all, failed to maintain a light or left said place dark upon said day.

V.

In answer to paragraph Five of plaintiff's complaint, the defendant has no information or belief upon the subject and therefore, and from want of information and belief, denies that two of plaintiff's ribs were broken loose from his breast bone on the right side by striking a log or rock with his side or that plaintiff struck with such force that said ribs were broken again near where they joined the back bone; denies that the right shoulder of the plaintiff was dislocated or the muscles or tendons thereof badly wrenched and sprained; denies that plaintiff's head struck a rock or log causing a cut above the right eye; denies that plaintiff was rendered unconscious by reason of said injuries so that he lay exposed in said condition upon a cold night for a period of about an hour before he was discovered or taken to a place where he could be cared for or remained unconscious until about 3 or 4 o'clock the next morning. Denies that such blow upon his side or the exposure of the plaintiff, while lying in such, or any, unconscious condition, caused an injury to the right lung of the plaintiff or caused the same to become highly inflamed to such a condition that he coughed up or discharged therefrom pus or matter continuously from the 16th day of November, A. D. 1916, to about the 2nd day of December, 1916, or at any time, or that said right lung is affected or injured and denies that plaintiff is informed the said

alleged injury to his lung is of a permanent nature. Denies that by reason of the alleged injuries, or the alleged condition of the plaintiff's lung, he was compelled to cough almost continuously, or at all, from the time of said injury up until December 2, 1916, or to any other date, or on account of the injury to plaintiff's ribs, the act of coughing was extremely painful, or on account of said alleged injuries, plaintiff suffered great, or any, pain or suffered or still continues to suffer great, or any, pain on account of the condition of said lung; denies that on account of said injuries plaintiff is wholly, or at all, disabled or unable to perform any labor or his injuries are of a permanent or lasting nature.

VI.

In answer to paragraph Six of plaintiff's complaint, defendant says that it has no information or belief upon the matters set forth therein sufficient to enable it to answer the allegations thereof, or any of the said allegations of paragraph Six, and that it bases its answer and denials on that ground and denies each and every of said allegations and each and every of the statements and allegations contained in the said paragraph numbered Six.

VII.

In answer to paragraph Seven of plaintiff's complaint, defendant says that it has no information or belief upon the matters set forth therein sufficient to enable it to answer the allegations thereof, or any of the said allegations of paragraph Seven, and that it

bases its answers and denials on that ground and denies each and every of said allegations and each and every of the statements and allegations contained in the said paragraph numbered Seven, and defendant denies that prior to the said alleged injury the plaintiff was a robust, or healthy man and denies that he was earning \$3.00 per day, or any sum whatever, and denies that he was capable of earning any sum whatever in excess of \$2.50 per day.

VIII.

In answer to paragraph Eight of plaintiff's complaint, defendant denies that by reason of said, or any, injuries or the negligence or any negligence of defendant, plaintiff has been damaged in the sum of Fifteen Thousand Dollars, or any sum whatever, or in the further sum of One Hundred Fifteen Dollars medical fees or hospital expenses, or any other sum whatever.

AND FOR A FURTHER AND SEPARATE ANSWER AND DEFENSE TO PLAINTIFF'S COMPLAINT HEREIN, DEFENDANT ALLEGES AS FOLLOWS:

That, if the plaintiff met with any accident or received any injury while on, in or about defendant's railroad tracks or grounds or platform or station on said 15th day of November, 1916, or at all, the same was not received, sustained or brought about by or through or on account of any negligence or carelessness on the part of the defendant or by, through or on account of any failure of the defendant to discharge

its duties but that such injury, if any was sustained, was received and sustained by the plaintiff, wholly and alone through the negligence, fault and carelessness of the plaintiff, in that said plaintiff failed to observe his surroundings and make use of his eyesight and other senses; that if the physical condition of the premises was as complained of, it was apparent to anyone, and said plaintiff must have been fully aware thereof, or, by the exercise of ordinary care, could have known thereof, at the time when he claims he met with his said injury.

WHEREFORE, said defendant prays that said action be dismissed and that it have judgment against said plaintiff for all costs and disbursements incurred herein.

GEO. W. KORTE,
608 White Bldg., Seattle, Wash.

J. F. AILSHIE,
Coeur d'Alene, Idaho,
Attorneys for Defendant.

State of Washington,
County of King,—ss.

H. B. Earling, being first duly sworn, on oath deposes and says: That he is the vice-president of the defendant corporation, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, and as such is authorized to make this verification and makes the same for and on behalf of the defendant; that he has read the foregoing answer, knows the contents thereof, and that the same is true as he verily believes.

H. B. EARLING.

Subscribed and sworn to before me, this 26th day of March, A. D. 1917.

(Notary Seal)

M. C. MUMFORD,
Notary Public in and for the State of Washington,
residing at Seattle therein.

Filed March 28, 1917.

W. D. McReynolds, Clerk.

By L. M. Larson, Deputy.

No. 677.

(Title of Court and Cause of Action.)

VERDICT.

We, the jury in the above entitled cause find for the plaintiff and assess the damages to be recovered herein at the sum of \$7,500.00.

MIKE SHINE, Foreman.

Filed June 8, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

JUDGMENT.

This cause came on regularly for trial, Corkery & Corkery and R. B. Norris appearing as counsel for the plaintiff and George W. Korte and J. F. Ailshie appearing as counsel for the defendant. Thereupon, a jury of twelve persons were duly selected, empanelled and sworn to try said cause; and witnesses on the part of the plaintiff and defendant were duly

sworn and examined. After hearing the evidence, the arguments of counsel and the instructions of the court, the cause was submitted to the jury, who retired to deliberate upon their verdict and subsequently returned into court and being called all answered to their names, and then rendered the following verdict, which was accepted by the court and entered on the minutes as follows:

"We, the jury in the above entitled cause, find for the plaintiff and assess his damages against the defendant at (\$7,500.00) Seven Thousand Five Hundred Dollars.

"MIKE SHINE, Foreman."

WHEREFORE, by virtue of the law and by reason of the premises aforesaid,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff Bartholomew Chamberlain have and recover from the defendant, Chicago Milwaukee & St. Paul Railroad Company, a corporation, defendant, the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars, together with interest thereon at the rate of 7 per cent per annum from the date hereof until paid together with plaintiff's costs and disbursements incurred in this action taxed at One Hundred Fourteen and 15-100 (\$114.15) Dollars.

W. D. McREYNOLDS, Clerk.

June 8, 1917.

Filed June 8, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

PETITION FOR NEW TRIAL.

To the Hon. F. S. Dietrich, Judge of the United States District Court above named:

Comes now the defendant, Chicago, Milwaukee & St. Paul Railway Company, a corporation, and petitions the court to set aside the verdict returned by the jury in the above entitled cause and to grant to the defendant a new trial upon the following grounds:

1. Excessive damages appearing to have been given under the influence of passion or prejudice;
2. Insufficiency of the evidence to justify the verdict;
3. The verdict is against the law;
4. Misconduct of the jury;
5. Accident or surprise which ordinary prudence could not have guarded against;
6. Errors in law occurring at the trial, to-wit:

(a) The court erred in permitting the witness, Frank LaBranch to testify over the objection of the defendant that just prior to the time the plaintiff fell from the platform he shook hands with the plaintiff and bid him goodbye and that the plaintiff stated, "I am going along with you on this train," or words to that effect;

(b) The court erred in permitting proof to be made over the objection of the defendant, that at the time the plaintiff went upon the motor car and road thereon, he paid to the operator of the car a sum of

money, to-wit, fifty cents, and saw the other men riding on the car hand him money several times.

7. Specifications wherein the evidence is insufficient to justify the verdict:

(a) There is no evidence to justify the verdict; it is the result of passion and prejudice;

(b) The evidence greatly preponderates to the effect that the plaintiff, at the time he went upon the platform and made use of it, was not an intended passenger and not entitled to the rights of a passenger;

(c) The evidence largely preponderates in favor of the defendant and is without dispute that the plaintiff's injury was the result of a risk of which he was fully aware, and resulted in whole or part from his reckless misconduct;

(d) The proximate cause of plaintiff falling from the platform was not the absence of the railing but his stumbling against or walking around or against a box or trunk on the platform and his attempt to walk after he claims he was blinded by the light from the locomotive;

(e) That the evidence clearly discloses that the plaintiff was guilty of contributory negligence in that he was in a state of voluntary intoxication at the time of the accident and that the accident resulted primarily from such intoxication;

(f) That there is no evidence showing that the plaintiff has sustained any damage to his earning powers or his capacity to labor and earn wages or a compensation the same now as he could before the

said accident and that the evidence wholly fails to show that he has lost any time whatever on account of the said alleged injury except the time that he was in the hospital.

(g) That the evidence wholly fails to show any actual or substantial damages, any loss of earning power or any continuing pain or suffering or any special damages except the sum of \$155.00 paid out for medical aid and hospital charges and that the verdict clearly discloses prejudice and passion and the lack of unbiased judgment and impartial judgment on the part of the jurors.

8. The court erred in denying defendant's motion, made at the close of all the evidence, to direct the jury to return a verdict for the defendant upon each and every ground urged at the time.

This petition will be presented upon the pleadings, papers and files in the action and upon the minutes of the court, including not only the clerk's minutes but also the reporter's notes of the evidence which will be extended by the reporter who took the evidence upon the trial of said cause, together with all the exhibits introduced upon the trial of said cause, and a bill of exceptions to be hereafter prepared, served, filed and settled.

GEO. W. KORTE.

Postoffice address: Seattle, Washington.

J. F. AILSHIE,

Postoffice address: Coeur d'Alene, Idaho.

Attorneys for Defendant.

*In the District Court of the United States for the
District of Idaho, Northern Division.*

BARTHOLOMEW CHAMBERLAIN,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
ROAD COMPANY, a Corporation,

Defendant.

AFFIDAVIT OF SERVICE.

State of Idaho,

Count of Kootenai,—ss.

W. H. Bonneville, being first duly sworn, on oath
deposes and says:

That I am now and, at the several times herein-
after mentioned, was a citizen of the United States
and of the State of Idaho, over the age of twenty-one
(21) years and not a party to nor interested in the
event of the above entitled action; that I received the
annexed Petition for New Trial from J. F. Ailshie,
one of the attorneys for defendant, and duly and reg-
ularly served the same upon Corkery & Corkery, at-
torneys for plaintiff, by placing a true copy thereof
in a properly addressed envelope, postage prepaid,
directed to Corkery & Corkery, Rookery building,
Spokane, Washington, and depositing the same in the
United States Postoffice at Coeur d'Alene, Idaho, on
the said 11th day of June, 1917, between the hours
of 12 o'clock M. and 1 o'clock P. M., and that there is
a regular mail service between Coeur d'Alene, Idaho,
and Spokane, Washington.

That at the same time and in the same manner I mailed a true copy of said Petition for New Trial to Messrs. Norris & Yates, attorneys for plaintiff, directed to said Messrs. Norris & Yates at St. Maries, Idaho, and that there is a regular mail service between Coeur d'Alene, Idaho and St. Maries, Idaho.

WM. H. BONNEVILLE.

Subscribed and sworn to before me this 11th day of June, 1917.

(Seal)

C. McARTHUR,
Notary Public.

Residing at Coeur d'Alene, Idaho.

Filed June 11, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

ORDER.

This cause came on regularly on this 27th day of August, 1917, for hearing upon the petition of defendant for a new trial, the plaintiff being represented by his attorney, Robert Corkery, and defendant being represented by its attorneys, George W. Korte and J. F. Ailshie. After argument by the respective counsel and the court being fully advised in the premises, it is now ordered that the defendant's petition for a new trial be, and the same is, hereby granted unless the plaintiff elects within ten (10) days from this date to accept a reduction of said judgment in the sum of two thousand five hundred

(\$2,500.00) dollars, together with the interest accrued on that sum from the date of verdict, and to accept judgment in the sum of five thousand (\$5,000.00) dollars, and to waive said excess, then and thereupon said petition for a new trial shall be denied. Upon the Court's announcing its ruling, plaintiff's attorney announced in open court that plaintiff would accept the modification of the judgment and waive the said sum of two thousand five hundred (\$2,500.00) dollars, together with the interest thereon accrued, and accept judgment in the said sum of five thousand (\$5,000.00) dollars, together with the interest on said sum from the date of verdict rather than have a new trial granted.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the said judgment heretofore rendered and entered herein be, and the same is, reduced to the sum of five thousand (\$5,000.00) dollars, together with interest accrued on said sum from the date of verdict, and the said petition for a new trial is hereby denied and overruled, to which said order and judgment defendant duly excepts.

Done in open court this 27th day of August, 1917.

FRANK S. DIETRICH,

District Judge.

Filed August 27, 1917.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 677.

STIPULATION.

It is STIPULATED by and between the attorneys for the respective parties that the defendant shall have, and it is hereby granted, until August 15, 1917, in which to prepare, serve and file its Bill of Exceptions, and Statement of Facts on motion for new trial or appeal and that motion for new trial herein may be heard and determined by the Court at any time during the month of August at the Court's convenience and at any place the Court may direct.

Dated at Coeur d'Alene, Idaho, this 14th day of July, 1917.

R. B. NORRIS,
CORKERY & CORKERY,
Attorneys for Plaintiff.

GEO. W. KORTE,
J. F. AILSHIE,
Attorneys for Defendant.

The foregoing stipulation is hereby approved and defendant is hereby granted until August 15, in which to prepare and serve its bill of exceptions and statement to be used on petition for new trial or an appeal or writ of error in said cause.

Dated July 18, 1917.

FRANK S. DIETRICH,
District Judge.

Filed July 19, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

STIPULATION.

IT IS STIPULATED by and between the attorneys for the respective parties that the defendant shall have, and it is hereby granted until September 1 in which to prepare, serve and file its Bill of Exceptions, and Statement of Facts on motion for new trial or appeal.

Dated at Coeur d'Alene, Idaho, this 10th day of July, 1917.

CORKERY & CORKERY,

R. B. NORRIS,

Attorneys for Plaintiff.

GEO. W. KORTE,

J. F. AILSHIE,

Attorneys for Defendant.

(Title of Court and Cause.)

No. 677.

BILL OF EXCEPTIONS.

The defendant in the above entitled cause hereby, in accordance with the rules of this Court and the law, serves and files the following as a draft of its proposed Bill of Exceptions.

GEO. W. KORTE,

J. F. AILSHIE,

Attorneys for Defendant.

The undersigned attorneys of record for plaintiff, Bartholomew Chamberlain, do hereby acknowledge the receipt of a true and correct copy of the attached

draft of the defendant's proposed Bill of Exceptions this fourteenth day of August, 1917.

CORKERY & CORKERY,

R. B. NORRIS,

Attorneys for Plaintiff.

BE IT REMEMBERED, that heretofore on the seventh day of June, A. D. 1917, the above entitled cause came on for hearing and trial in the above named Court, sitting at Coeur d'Alene in the State of Idaho, before the Honorable Frank S. Dietrich, judge presiding, and a jury.

The plaintiff appearing and being represented by his attorneys and counsel, Messrs. Corkery & Corkery, and Messrs. Norris & Yates, and the defendant appearing and being represented by its attorneys, George W. Korte, Esquire, and J. F. Ailshie, Esquire,

Whereupon the following proceedings were had and done, and testimony taken, to-wit:

The jury was duly impanelled and sworn to try the cause.

BARTHOLOMEW CHAMBERLAIN, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION By

MR. CORKERY:

Q. Your name is Bart Chamberlain, and you are the plaintiff in this case?

A. Yes, sir.

Q. You reside where, Mr. Chamberlain?

A. Right across from Herrick, Idaho.

Q. That is on the line of the Milwaukee railroad, the main line?

A. Yes.

Q. Is that on the main line?

A. On the main line.

Q. Of the Chicago, Milwaukee & St. Paul Railway?

A. Yes.

Q. What sort of a station did the company maintain there at that point?

MR. KORTE: At what time are you talking about?

MR. CORKERY: Well, in 1916, in the fall there, what sort of a station and buildings was about that place?

A. You mean at the time of this accident?

Q. Before you were hurt.

A. They had a pretty fair place, used for this lumbering, selling tickets, and receiving parcels and freight.

Q. Before I get into this, I will ask you what your business is.

A. Farming.

Q. How long have you resided at Herrick, Idaho, or in that vicinity?

A. I took up a homestead there, it must be about sixteen or seventeen years ago.

Q. How much of a farm do you have there now?

A. Well, it is supposed to be 106 acres. I had 120 acres, but I have disposed—

Q. How long have you been in this vicinity about here, in this country?

A. Since 1889.

Q. Now you say that they had a station there with a depot?

A. Yes, sir.

Q. And what sort of a platform did they have prior to the day you got hurt?

A. They had about the same platform in front of the depot.

Q. About how long was it, and about how wide was it?

A. Well, in front I don't hardly think it is much more than ten or ten and a half in width.

Q. And about how long?

A. And it might be, it is about ninety or ninety-three feet in length, the platform was.

Q. The platform is of plank, I suppose?

A. Plank.

Q. Where is that, with reference to the main track?

A. The main track is on the south side of where the depot had been, it was then, when we was talking about, and there is a branch road leaving the main line up to Big Creek.

Q. A branch leaves there?

A. A branch, a logging road.

Q. Where is the depot with reference to the branch and the main line?

A. Right in that V.

Q. Right between the two?

A. Between the two.

Q. And about what was the distance between the branch track and the main track where the depot was?

A. The distance, you mean?

Q. Yes, in feet.

A. Well, to where I fell, I don't think—

Q. No; I want to know the distance from the main track over to this branch track, about how many feet, just roughly?

A. Well, it was almost coming together in a V shape; it was plank, so that they could transfer from one track—

Q. But at the place where the depot was, can you tell us about how far from the main track over to the side track, at the place where the depot was built?

A. Well, it couldn't be much more than maybe forty feet.

Q. Now, was the platform which you describe, was that along side of the main track or the other track?

A. Well, it was supposed to be on both tracks, I suppose; that is the way I have always—

Q. How close was the platform which you have described to the jury to the main track? Was it right along side?

A. It was right facing on the main line. There is a platform for about ninety or ninety-three feet in width right on the main line.

Q. Right along side of the track, I suppose?

A. Yes, right along side of the main line.

Q. Now when, if at all, was that depot building moved away?

A. Well, it was moved away some time in October, from the first, or between the first and the tenth; I don't know just exactly.

Q. The first of October what year?

A. 1906.

THE COURT: You mean 1916?

A. 1916.

MR. CORKERY: Q. That would be last year?

A. Yes.

Q. And before that depot was moved was that station used there by the company for the purpose of discharging and taking on passengers?

A. Yes, sir.

Q. Then it was moved, you say, October 1. Now just describe to the jury the condition of the platform and depot premises after the depot was taken away, the depot building.

A. After they moved the depot, loaded it on the cars, they left that place there, and they moved it to Marble Creek, which they are using on account of the logging up there, I suppose, for the same purpose.

Q. Just tell the jury what the condition of the place was there after they moved it away.

A. And then when they moved it away they left just the front platform of where the depot was, never put neither a guard nor never put lights for a train to be late, never put nothing of that kind there; just left it just the way they left it; left a hole right there.

Q. Where was the hole, with reference to the platform? Was it alongside of the platform?

A. It was within, oh, it might be from one end of the other, it might have been such a thing that they left there maybe forty feet from one end or the other, left a hole right on the side of this walk that they left there in front.

Q. On the side of what?

A. On the side along there of this walk.

Q. You mean the walk or the platform?

A. The walk or the platform, as they call it now.

Q. About how deep was that hole?

A. Well, it must be,—we measured I think about twelve feet.

Q. Twelve feet deep?

A. Twelve feet deep right there, where a person fell; they can't fall any less than twelve or fourteen feet; and there is some log drift during high water, and other trash, drifted and lodged right there.

Q. What was the shape or condition of the bottom of this hole after the depot had been moved? What did the hole look like, the bottom of it?

A. The bottom, it was nothing but dirt and rock, that when they fill up this, roll a lot of rock and logs and so on, left there.

Q. Was there anything else in the bottom at the time that you got hurt?

A. There was a stump right close to where—it was left in the hole there, was a big stump left there.

Q. Now you say that the hole was left after the

depot was moved, for a distance of about how many feet along the platform, how long?

A. Oh well, it might have been about between forty and some odd feet, forty and some odd feet.

Q. After the depot was moved what did the company do with reference to maintaining that as a station?

A. They take on passengers, selling tickets, just the same as they did before.

Q. What trains made stops there after they took the depot and about the time you got hurt, on November 15, last year?

A. Well, I didn't understand that.

Q. I say what trains made stops there?

A. It is the one that goes up in the morning at 10:22, which we called that 18.

Q. That is a passenger train?

A. That is a passenger. And in the evening the same; we call that 17, going toward Spokane, at 5:02, supposed to be; it used to be.

Q. I will ask you whether or not the company continued to sell tickets from other points on their line to that point?

A. They sold tickets, and I think, I actually believe they are selling right to this day, because it ain't more than a week or so that I got a ticket right from St. Maries to Herrick myself; it ain't more than a week or so.

Q. What is the fact as to whether or not passengers are picked up there from day to day, and were

picked up at about the time you were hurt, by the company?

A. Well, they were taking passengers with the flags.

Q. And did they do that from day to day?

A. Well, I don't know whether they would do it today, but if you are on the platform they will stop or slow down, and another thing I will say, I was on the platform when another man came, and there was nobody got on and nobody got off; there was a man that wanted to take the train that evening, and asked me whether, if they have to flag this train. And I said, "He is the conductor there; ask him, there at the door." The conductor replied to him, and he says, "No; we stop here, and we have no order to discontinue this place or go by, we stop whether passengers or no passengers." I hear the conductor say that myself.

Q. Now on the day that you got hurt, what day was that again now?

A. It was on the fifteenth of November, the evening of the fifteenth of November.

Q. Last year?

A. Last year.

Q. And what train did you attempt to take on that day, if any?

A. Seventecn.

MR. KORTE: That is leading and suggestive, Your Honor.

MR. CORKERY: Q. What time is that train due there?

A. Well, when they are on time it is supposed to be at 5:02.

Q. Five-two p. m. or a. m.?

A. Five-two p. m., in the evening.

Q. And when did you go to the station grounds to take that train, or about what time?

A. I left home, I must have left home just about half an hour or maybe three-quarters of an hour, to go from my home to get the train. I have to push the river with poles, swift water; I had to push pretty near a quarter of a mile to get to that train.

Q. You came across the river in a boat, you say?

A. Yes.

Q. What sort of a boat?

A. It is what we call a swift water boat.

Q. A canoe?

A. It is different from canoes; it is a canoe; it is different from a skiff; it is made for swift water.

Q. And you say your home is about what distance from the—

A. Oh, it must be close on to half a mile, the way we have got to go, but it is a little over a quarter, straight, I suppose.

Q. What river is that you cross, to get—

A. That is on the St. Joe river.

Q. Now you got to the depot grounds about what time?

A. I got there along about,—oh, it must have been about maybe fifteen or twenty minutes before the train.

Q. What time would that be?

A. That would be maybe four something, after four, something.

Q. After four?

A. Yes. And then I was told by some one there

MR. KORTE: I object.

MR. CORKERY: Yes, not what you were told.

Q. Was it dark when you got there, or light?

A. It was getting dark.

Q. Just getting dark?

A. Just getting dark at that time.

Q. What did you do after you got there?

A. They told me that the train might be half an hour or an hour late. Well, then I started to walk down the track to meet a man that wanted me, where I was going to Plummer, I had some business there, and he had told me that he wanted me to do some business for him too, if I go there.

Q. You walked down the track?

A. I walked down the track and met him.

Q. In which direction?

A. Right straight down, say northwest or west from this depot, where the depot stands.

Q. Was this an east bound or a west bound train that you were going to take?

A. West bound.

Q. West bound train?

A. Yes.

Q. And you walked down the track for about what distance?

A. I walked down the track, it must be pretty near a quarter of a mile, until I met this man.

Q. Then did you return to the depot?

A. We come as far as this bridge. There is a bridge across Big Creek, and we sat there, and to where, if I could hear the train, we feel I could walk fast enough to make that train. We sat there until it must be close on to 7 or half past 6 or 7, until I hear the train coming, and he told me to, this man Robinson, he said, "Bart, I think you had better go; I hear the train," and I said, "Yes, I hear it, too."

Q. You went on down to the depot?

A. I walked right on down to the depot. Just then the train had come through this tunnel; this tunnel come through there about a mile or better, or somewheres near a mill. Well, then I got to the depot, and I met some of the fellows there, and says, "I am going." "Well, Bart," they said, "I bid you goodbye." And I says, "I am going on the same train," and just then the train was coming around, and there was a box or a trunk right on that platform, and as I was coming I just stepped right around to go behind this, so as to catch the train. When they stop there is always a space behind that you have got to got at the other end of the depot, on the east end of the depot. So then as I went to go around that trunk, some way, I don't know, I just made a step, the same as usual, and off I went, off, and of course I know when my foot missed, I know that I was a goner, but I didn't know where I was going to land.

Q. Did you fall into this hole you have described?

A. Yes, sir, I fall right in that hole.

Q. Just a minute, Mr. Chamberlain. Was there any light,—first I will ask you this,—what was the distance away, in the direction from which the train was coming, that you could first see the light of the train from the depot, about how many feet away?

A. Oh, it might be about three or four hundred yards to where the platform is now, coming kind of around where it strikes this depot,—the flash—

Q. Just a minute. That is to say, there is a curve—

A. There is a curve.

Q. And the distance is what from the curve to the platform?

A. Just about three hundred yards, I suppose; maybe two or three hundred yards, or six hundred feet or nine hundred feet; I don't know just what it could be.

Q. Was there any light came from the train about the time you fell, and, if so, describe that.

A. Yes. The train was just about making this curve when I stopped to go around this trunk, and a kind of a flash struck me in the face, but I don't know—I will say—

MR. KORTE: Of course, Your Honor, I want to object to the light; there is no charge of negligence on the ground that the light blinded him, or that these trunks were there. The only charge of negligence is that there was no railing maintained at this particular platform.

THE COURT: This will be one of the circumstances, is all. Go ahead, you say the light struck you.

A. Yes, the light struck me and kind of blinded me a little bit, and I went to go around. There was neither a guard to protect me or nobody else, and—

Q. Just a minute. Was there any light about the depot, any light that you saw there?

A. No, there is no light of any kind there, outside of the locomotive light.

Q. Is there any light about the depot building or grounds which would in any way light up the platform or this hole or the edge of the platform in any way?

A. No light of any kind, unless a person would come, the trains would be late, and away after night they might bring a lantern to flag the train, is all.

Q. Was there any guard or barrier or any protection of any sort about the edge of this platform next to the hole?

A. No protection, no guard of any kind at that time.

Q. What was the condition of the night, as to being dark or otherwise?

A. Well, being as the train was late, I should judge from the best I know, that train was late, and it was getting dark, it was pretty dark, but how dark of course, I wouldn't say. It was a dark night.

Q. At the time the train pulled in what was the condition of the night then?

A. A dark night.

Q. Is there anything about that country there that make it dark?

A. On account of being so deep among the mountains, of course, it will be naturally darker than it would be on a level, in open country.

Q. How near are the mountains or hills there to the track?

A. Oh, it ain't far. Right at Herrick there you can strike a pretty good sized mountain within a few hundred yards.

Q. Now, what do you know after you fell into the hole?

A. I know nothing. When I see I was going, and when I struck, I tried to move, but I struck on a log, I suppose, I suppose it is the end of a log, or might be a big rock, struck me somewheres in the side here and my shoulder. That is all I know from then until about 4 o'clock next morning, suffering.

Q. What did you know at 4 o'clock? What did you find out then, and where were you?

A. They had picked me up and took me to a place there that used to be a store and postoffice, but everything had moved. It belonged to a friend of mine there. And they laid me in the bed, and when I come to—the person that is that long unconscious, well, he surely must be suffering.

Q. What was your condition? How did you feel when you woke there in bed at that hour?

A. Well, I tried to move, when I first come to, I tried to move, tried to locate myself. I know when this thing happened, and I didn't know how long it

had happened, but I couldn't locate nobody, and I asked,—I hollered, the best I know, the best I could, to see who were there. Nobody answered, and finally I managed to get on my feet, suffering and so on, I got on my feet, and with this hand I got in my pocket and lit a match, and just as soon as I see the light I know where I was, and there was a young kid there—

Q. Well, Mr. Chamberlain, you were there in bed, and how long did you stay there in that store, about what length of time?

A. After I fell—

Q. No, after you woke up in bed.

A. Well, I got one of the men—

THE COURT: How long were you there? How long did you stay in the store?

A. Well, from 4 until about 10, 11; it must have been about 6 or 7 hours.

MR. CORKERY: Q. Six or seven hours you stayed in the store?

A. Six or seven hours.

Q. Were you in bed all of that time?

A. I laid in bed. When I could get up I would get up and try to walk.

Q. Where were you taken from the store?

A. I was taken to the train; they packed me to the train. It happened to be that there was an engine and a caboose coming down.

Q. What time of day were you taken on this engine and caboose?

A. Along close on to 11 o'clock.

Q. Eleven o'clock in the forenoon of the next day?

A. In the forenoon of the next day, on the sixteenth.

Q. How did they pack you out?

A. On stretchers.

Q. Stretchers?

A. Yes, sir.

Q. Where were you taken to?

A. I was taken to the St. Maries hospital, Dr. Platt's hospital.

Q. And you were carried in the caboose there?

A. Yes, sir.

Q. How were you carried there?

THE COURT: That is unimportant.

MR. CORKERY: Q. And you were taken into the hospital by what sort of a conveyance?

A. Well, I got a man to help me down to the hospital. He telephoned to Dr. Platt to meet me at the train.

Q. And did they meet you there?

A. Yes, sir; Doc. Platt met me there with his automobile.

Q. And you were taken into this hospital?

A. Yes, sir.

Q. How long did you remain at the hospital?

A. Oh, I must have been there about three or four weeks, about three or four weeks, and then a nephew of mine came, and nothing but I had to go with him.

Q. And you went to live at his place?

A. Yes, sir.

Q. And where was his house at?

A. He lived just down the river from St. Maries about a mile and a half or such a matter.

Q. Were you under the doctor's care at your nephew's house?

A. Yes, sir.

Q. And how long did you continue to be under the doctor's care?

A. Well, really I am under his care yet, as far as that goes.

Q. You still consult the doctor.

A. Yes, sir.

Q. During the time you were in the hospital, Mr. Chamberlain, what was your trouble? How did you feel?

A. When I first—when I was gone—after I come to it was nothing but pain, and it seemed that my side here was just about to drop to pieces, and the shoulder and the arm which it was that I couldn't move, almost paralyzed, and I felt when I could move it was just like taking knives and running it through my lungs and all through this side; that is the way I felt.

Q. Did you spit up at all?

A. Yes, and I begun to cough and spit, this inflamed blood and so on, and I spit,—the doctor say to me that it was hard for me; he says he can't see where in the world that phlegm and blood and so on comes from. I was spitting there for a week or such a matter a cuspidor like that full twice or three times a day.

Q. Was that blood or what was that you spit up?

A. Blood and phlegm and so on, so that it must show there was something in me to suffer.

Q. What is your condition now, Mr. Chamberlain? What is your condition at this time?

A. Well, I feel pretty—excepting this shoulder, right in the shoulder I can't very well handle it; I can handle it down, but I can't very well use that; and there is a pain, sharp pain, through my lungs when I take a long breath; it is just the same as running needles or knives through me; and right back in my shoulder, in the shoulder blade, there is a pain there that if I walk any distance there is a kind of a burning pain, just as though something has been broke or disconnected, to this day.

Q. Do you have any trouble with your shoulder in damp or cold weather?

A. Yes, I notice it a little more at the time, just about raining or such a matter.

Q. What is your condition then?

A. Oh, it is just like running needles, and pain and so on, through this side.

Q. What is the condition of your lungs when you exercise to any extent or move about rapidly?

A. My wind is short; it has never come back.

Q. Is there any soreness or pain in your chest at those times?

A. Yes; when I take a long breath I feel a pain right in my lungs.

Q. What was your condition of health, Mr. Chamberlain, prior to your injury?

A. I was just about as healthy a man as there was in the State of Idaho, I do actually believe.

Q. Were you able to work in and about your farming and other occupations?

A. Yes, sir, I was able to do as much work as any common man.

Q. Did your work before you were hurt consist of work in the open air or otherwise?

A. In the open air, farming; it is nearly all open air work.

Q. I understood you to say you were about to take this train to Plummer, is that it?

A. Yes, sir.

Q. And is Plummer upon the same line, a station upon the same line, the Milwaukee line?

A. It is right on the Milwaukee line.

Q. About how many miles distant from Herrick?

A. Well, I wouldn't say just what it is. I wouldn't say how far it is even from Herrick to St. Maries, and from St. Maries I think it is the next station below.

Q. Several stations below?

A. It is the next station from St. Maries, I think; from my place, I think it is the third station, from Herrick, my place.

Q. What expenses, if any, did you incur in connection with your treatment at the hospital and with Dr. Platt?

A. What expense?

Q. Yes.

A. Oh, well, I was under the doctor's care, of

course, and a nurse, for all the time I was in the hospital.

Q. What was your bill there, do you know, your total bill?

A. Oh, it must have been maybe a couple or three hundred dollars, two hundred or three hundred dollars.

Q. You haven't settled up with the doctor yet?

A. Not all. I have paid him quite a bit, but but there is some due.

Q. I understand you to say you are still under the doctor's care?

A. So I am; that is why I don't know what is going to be the balance.

MR. CORKERY: That is all.

CROSS EXAMINATION by

MR. KORTE:

Q. How old a man are you?

A. Sixty-seven.

Q. How long have you lived across the river from this station of Herrick?

A. Oh, I lived there since the fire in 1910.

Q. Where were you living before then?

A. I lived at the upper end of my place, just about near half a mile.

Q. Your land then lies back from where you now live?

A. Yes, sir.

Q. How much land have you got in there?

A. I have got 106 acres now.

Q. Is that your allotment?

A. It is not an allotment; it is a homestead.

Q. You took up a homestead?

A. A homestead.

Q. And have you perfected your homestead rights?

A. Yes, sir.

Q. Have you a patent to it?

A. Yes, sir.

Q. From the government?

A. Yes, sir.

Q. And what farming do you do on it?

A. Raising garden and hay.

Q. How much hay do you raise?

A. Oh, I got maybe last year, cut about thirteen or fourteen tons.

Q. Where do you sell that hay?

A. Usually sell it right there at home, or feed it out.

Q. Did you sell any of it this year, or last year, last fall or this spring?

A. Sold it all.

Q. How did you get it across the river?

A. Fed it right there at home.

Q. I asked you whether you sold some.

A. Sold it all. They bought it, you know, to feed their own stock right on the place.

Q. On the place where you live?

A. Yes, sir.

Q. Who is that man?

A. It is a man that is packing for the companies on Marble Creek.

Q. What is his name?

A. Dick Gilbert.

Q. How much did you say you sold him last winter or this spring,—all of it?

A. Yes.

Q. Did you sell any to Higgins?

A. No.

Q. This spring?

A. Not of that hay.

Q. And brought it across the river?

A. I sold some of the hay to Higgins, but I took it down to Mr. Van Dorn's place.

Q. On which side of the river?

A. On the same side I am on.

Q. You didn't bring any across the river this spring at all?

A. I brought the hay for Mr. Higgins, but, as I said, to Mr. Van Dorn.

Q. I asked you whether you brought the hay across the river.

MR. CORKERY: I object, unless he shows for what purpose,—it is going off on a tangent.

THE COURT: I assume that counsel has some purpose.

MR. KORTE: Q. Did you bring any hay across the river yourself this spring for Higgins or any other man?

A. Yes, I brought it for Higgins.

Q. Did you bring it across the river?

A. Yes, but—

Q. How did you get it across?

A. In a boat.

Q. In this boat that you say you poled across?

A. Yes.

Q. How many bales would you have in that boat at a time?

A. I didn't have no bale; I would just bundle it up and take whatever the boat would hold.

Q. And then you would pole it across the river?

A. It is mostly paddling from down below, where I got the hay from.

Q. Did you have to paddle your boat up the river then to come across to where you were going?

A. Yes.

Q. How many trips did you make there to get that hay across?

A. I might have made about two or three trips.

Q. That is swift water there, isn't it, in the St. Joe?

A. Kind of slack water there. It is a long ways between the riffles there; it ain't all swift, you know.

Q. You said you had to pole your boat across instead of paddling, in your direct examination, isn't that so?

A. From my home to the depot, I had to come through swift water, but to where I took the hay, I could almost paddle back and forth.

Q. But when you come from your home over to this little station, when you want to take the train, you have to pole your boat through the swift water?

A. I have to pole the swift water, rapids.

Q. How many times a week would you make that trip?

A. Where?

Q. From your house to the station.

A. Oh, well, if I have nothing to do I might go maybe once a day and in the summer when I am doing nothing I might go for the mail, and go and get a paper off of the train, or such a matter, maybe once, maybe twice a day,— I don't know.

Q. How often have you gotten a paper off of the train down to date, since you were hurt?

A. Since I am hurt?

Q. Yes, how many times did you ever get a paper off the train?

A. Well, there was for a long time there I used to get a paper, when I was at home, I used to get a paper nearly every day at the time I was home.

Q. So you would cross that river twice a day then by poling?

A. It was in the winter, and you could walk; it was cold.

Q. I am talking about when you had to use the boat.

A. I never used the boat much after I got hurt; there was ice.

Q. This spring did you ever get any papers off of that train, in the spring?

A. This spring, of course, after the ice went away, I would pole up a ways and get a paper.

Q. I want to know how many times you ever got

a paper off of the Milwaukee train this spring after the ice went out.

A. I might have got it maybe a dozen times or more.

Q. Now you said something about them selling tickets at this place. They never sold any tickets after the station building was taken away and moved to Marble Creek, did they?

A. They was selling tickets. You could buy your ticket—

Q. I mean at the station.

MR. CORKERY: Let him make his answer.

THE COURT: Did they ever sell any tickets at this station after the building was moved away?

A. After the building was gone, not as I know of—nobody there to sell tickets.

MR. KORTE: Q. You mean when you were at some other place and wanted to go to Herrick, they would sell you a ticket to Herrick?

A. Yes, sir.

Q. But if you wanted to get on the train at Herrick, after the building was taken away, you would have to go down there and flag the train and get on?

A. I never had to flag the train. Whenever I want to get the train or any place they would always check, and all you have got to do, they stop.

Q. If they saw you on the platform they would slow down and pick you up?

A. Yes, sir.

Q. How many times did you ever get on that train and slow it down, as you say, after you were hurt?

A. How many times?

Q. Yes, sir.

A. Oh, I don't know. I used to go down maybe, when I would be home, I would be running short of medicine, or such as that, and I would go down maybe once a week or such a matter.

Q. How many times before you were hurt did you ever slow that train down and get on?

A. Not only slow down; they would stop.

Q. How many times did that train ever stop for you before you were hurt?

A. Every time I want to go some place, but how many times I never kept track.

Q. Well, give us an idea, Mr. Chamberlain.

A. Every time I travel, but, of course, I can't say how often, how many tickets.

Q. Did you ever take that train there at that platform after the building was taken away?

A. Yes, sir.

Q. How many times did you take it? How many times did you go there to take it?

A. I must have been there maybe twenty-five or more times.

Q. Before you were hurt?

A. Before I was hurt. I had been living there for ever so long.

Q. I mean now from the time the building was taken away down to the time you fell off that platform, how many times do you claim you stopped the train there and got on?

A. After they moved the depot, I don't think

hardly I took the train there more than a few times.

Q. About how many?

A. Maybe two or three different times.

Q. Were you there when the building was moved away?

A. Yes, sir.

Q. You were there on that day, when you saw them moving it?

A. I didn't say I was there, but I could see right from my home.

Q. Did you help them load the building on the car?

A. No, sir.

Q. It was loaded onto a car, was it not, and taken to Marble Creek?

A. Yes, it was loaded on a flat car.

Q. And the train that you would take and did take before you were hurt was this No. 17, going west, and due there about 5:05 or 5:03?

A. Yes, due there at 5:02.

Q. Now, before you were hurt, and after the building was taken away, can you tell me any place you went to on that train?

A. That I went to?

Q. Yes, sir.

A. I have took the train once for Spokane.

Q. Yes. Then where? Any other time?

A. I don't know where—I might have went, took the train to St. Maries for all I know, and I don't remember—

Q. Did you go east at all?

A. I might have took the train to go up to Marble to get the mail.

Q. That is where you had to get your mail?

A. Yes.

Q. And get your groceries?

A. Yes.

Q. And get what you needed for the house?

A. Yes, sir.

Q. Now, this morning when you were hurt, what were you doing there when you got there?

A. The morning I was hurt?

Q. Yes,—where were you in the morning?

A. I was right within maybe two or three hundred yards from where I fell, from the depot.

Q. Were you at your ranch there in the morning, or that night, before you were hurt?

A. I was there the night before, yes.

Q. When you got up in the morning what did you do about your ranch, the morning of the day when you were hurt, on the fifteenth of November, the morning of the fifteenth of November, what were you doing in the morning?

A. I was home there. I left home there. I was just taking care of the garden truck, I suppose.

Q. What time was it you left home?

A. Oh, to take the train that night?

Q. No, I don't care about that. What time did you leave home that morning?

A. I left there—I don't know what time it could be,—between 8 or 9 o'clock some place.

Q. You went across the river?

A. Yes.

Q. And from there where did you go?

A. I went to Marble Creek to get my mail.

Q. And you stayed at Marble Creek until after noon?

A. I never got there until along,—I don't know what time it was,—maybe 12 or such a matter.

Q. You ate your lunch there at Marble Creek, did you?

THE COURT: Your dinner or lunch.

A. I must have done it, yes, stayed there.

MR. KORTE: Q. Who went up to Marble Creek with you?

A. Nobody that I know of.

Q. How?

A. I went alone.

Q. Did you walk?

A. Yes, sir.

Q. And when you got up there you found Frank La Branch? You found Frank La Branch and Wallace La Branch there, didn't you?

A. No. I seen Wallace La Branch.

Q. But not Frank?

A. No.

Q. Was McDowell there with you?

A. I met him there, yes, see him there that day.

Q. How long did you stay there at Marble Creek before you started back?

A. Well, I don't suppose that I was there much more than maybe an hour or such a matter.

Q. Who else was there with you and McDowell

and Wallace La Branch at Marble Creek? Was anyone else there with you?

A. There is a whole lot of people live in a place like that, you know,—lumber jacks and so on.

Q. How big a place is Marble Creek?

A. Just merely a station.

Q. One or two buildings, are there not?

A. A store and—

Q. That is all that is there?

A. That is all I know of.

Q. Except what lumber jacks come out of the woods and visit around and then go back?

A. Yes.

Q. Was there a few other lumber jacks there besides McDowell and La Branch?

A. I met a few others there. I met Hank Robinson and another man.

Q. What were the names of any of the others besides La Branch and McDowell?

A. There is lots of people I know, and I don't know their names.

Q. Give us the names of the ones you do know. There was La Branch and McDowell, and who else?

A. Hank Robinson, and I went to see a man by the name of Glover.

Q. Where does he live? Who was Glover?

A. He is working around there, but at the time he was helping to run the ferry across the river.

Q. You bought some groceries there when you were up at Marble Creek, didn't you, and had them in a sack or package?

A. No.

Q. You had some groceries?

A. No.

Q. You had nothing then?

A. Not that I know of.

Q. You didn't buy anything at the store there that day? Remember well, now. Did you buy anything at that store that day to take along with you?

A. I might have had something. I remember that I bought something and had it in a sack.

Q. You then had a sack with you when you left Marble Creek to go back?

A. Yes.

Q. What was in it?

A. Well, I don't remember what it was now.

Q. Was it groceries or a pig?

A. It was no pig.

Q. Was it groceries, something to eat, or hay, or what?

A. It might have been some groceries, or such a matter.

Q. You bought some groceries there, didn't you?

A. Something of the kind.

Q. At that store that day?

A. Yes.

Q. And you bought some kerosene, didn't you?

A. I wouldn't say for sure now.

Q. And you had a drink of whiskey when you were there?

A. Oh, well, the boys—I met the boys and they offer me a drink.

Q. How many drinks did you have, Bart, before you started west?

A. I don't think hardly that I had any more than one or such a matter.

Q. And you had a bottle with you?

A. I had no bottle. The boys that invited me to drink, they had a bottle.

Q. How many bottles did you punish before you left?

A. All I seen was a four-bit flask.

Q. How many of you patronized that flask?

A. There might have been five or six.

Q. A pretty good sized flask?

A. A flask.

Q. What do you mean by flask?

A. A four-bit flask, a full pint flask.

Q. And you drank that before you left, with the others?

A. I drank maybe a drink out of it.

Q. You said you had two or three drinks, didn't you?

A. I said I drank one out of it that I know.

Q. Aren't you sure that you took more than one?

A. Oh, well, I might have—

Q. And then you started to go west at what time?

A. Well, I wouldn't say. It must have been about half past 1 or 2, maybe.

Q. And who had this whiskey in the flask?

A. Oh, well, now, I don't know. You know—you meet so many, you know, you don't know who have

it; they call you to take a drink, and you don't know who owns that liquor, and I don't know.

Q. Every time you went up there, was that a habit, that you would be treated in that way?

MR. CORKERY: We object as not being proper cross examination.

THE COURT: Overruled.

MR. CORKERY: An exception.

Q. Is it so common that everybody had whiskey up there that you couldn't tell who had the flask this day?

A. They had liquor, you know, before the election. You know, this election there was liquor all over, but who had that liquor I don't know. I am sure I didn't have it.

Q. Anyway, who went west with you when you went down the track, you started west to walk home?

A. I only walk from the postoffice to the depot. I was going to walk home.

Q. And then didn't Wallace La Branch and McDowell go with you down the track?

A. They were a little ahead of me.

Q. You caught up with them, did you?

A. Yes.

Q. And when you caught up with them you took another drink out of their flask?

A. I never took no other drink with them.

Q. Didn't they invite you to take a drink when they took a drink?

A. Not when we left there.

Q. Wallace La Branch was drinking, wasn't he?

A. He might have been drinking before I knowed him.

Q. Well, he was staggering around and pretty well tanked up, wasn't he, Bart?

MR. COCKERY: We object to the condition of anyone except the plaintiff, if the Court please.

THE COURT: Overruled.

MR. KORTE: Q. Wallace La Branch was well tanked up when you caught up with him, wasn't he?

A. There was nobody staggering drunk.

Q. Well, they had whiskey in them, didn't they?

A. They had, but—

Q. And they asked you to drink when you caught up with them?

A. If they do ask me to drink I don't have to drink every time they ask me.

Q. But they did ask you to drink out of the flask?

A. Maybe.

Q. And you took some more drinks after you started to walk down?

A. No, I didn't take no more.

Q. How many flasks did La Branch have with him?

A. Not any, he didn't have any.

Q. When you got down about a mile and a half you flagged the speeder men, didn't you?

A. I never went that far. I walked from the postoffice, that store, to the depot, or where they had that speeder, and as I was going along they told me, "We will take you down to Herrick," and I looked at them and says, "What do you mean," and they say,

"We are going that way and we will take you down."

Q. And you got on the speeder, did you?

A. Yes.

Q. And Wallace La Branch got on too?

A. Yes, he got on.

Q. They loaded him on, didn't they?

A. No, sir; he walked like a man.

Q. Did he get on a seat on the speeder the same way you did?

A. He got on and there was a little box there, and they told him to sit there, and he sat like a man.

Q. They told him to sit there and sit like a man?

A. No; he sat like a man.

Q. Did McDowell get on too?

A. Yes.

Q. And you got down then almost to Pokono, a station between Marble Creek and Herrick, and when you got down near Pokono you picked up Old Black Joe, didn't you?

A. We see Black Joe laid right on the side there with a fit, what we call a whiskey fit that he have; when he is drinking he always got into a fit.

Q. Old Black Joe was pretty well soused, to the extent that he had a fit?

A. Yes.

Q. Who was this fellow that pulled him off the track?

A. There was another man there.

Q. He asked the men to take him along with them?

A. No. We says it was too bad to leave this man

alone, and he had about a mile to go to his ranch there, and this man that run this speeder, he says, "Boys, I will go and take you as far as right opposite this place, and I will come back and get him," so he did.

Q. Go ahead. You have got it right.

A. And then when he brought Black Joe down, then he says, "I will take some of you to Herrick," and he says, "Bart," just as well as Hank Robinson, and there was another man, this McDowell, he says, "We will carry Black Joe to his house," so we took hold of him and carried him.

Q. When did Black Joe get a gun then and go after you?

MR. CORKERY: We object to that as being entirely immaterial and not proper cross examination.

THE COURT: Overruled.

MR. CORKERY: An exception.

MR. KORTE: Q. He got his rifle, didn't he?

A. After he come—we take him in. I didn't go into the house. And then, of course, in a kind of a trance,—the man have a fit and I don't suppose he know what he was going. Well, when the speeder men come along we went a little ways, and we see Black Joe coming. He had a gun and a bucket—

Q. That was after you had taken him home?

A. After we took him home.

Q. He came back then with this gun and a bucket?

A. He went right toward—whether he come to meet me or whether he went to meet somebody else I don't know.

Q. When he came up to you what did he say to you?

A. He didn't come up to me.

Q. Who took the gun away from him?

A. A big Swede that was along with us.

Q. He took the shells out or shot them away?

A. He fired one shot, I suppose, and I went to Black Joe and said, "What do you mean," and he said, "Nothing, Bart, nothing at all, Bart."

Q. He was cussing you and you was getting back at him?

A. No such a thing.

Q. Anyway you took Black Joe on to the speeder along with you?

A. I didn't take him. He come himself. I didn't take him.

Q. Anyhow, he got on to the speeder with you, and rode down, and you all went then as far as Her-rick?

A. Yes.

Q. How many drinks did you take after you got Black Joe on?

A. I don't remember taking another drink, I tell you.

Q. Did you see the others drink?

A. I don't know.

Q. They had a bottle with them?

A. I suppose they had.

Q. Isn't it so? They had a bottle with them on the speeder, and were drinking?

A. Yes.

Q. And you took a drink with them?

A. I never took no—

Q. When you got down to Herrick the signal men unloaded you?

A. Yes.

Q. And you and Wallace La Branch went off of the platform and walked west along the track toward the bridge that you said you sat down on. When you got to the platform, Bart, it was then about half past 4 o'clock?

A. No, sir.

Q. What time of the day was it?

A. It couldn't have been more than 3 or half past three.

Q. You are sure of that?

A. Well, I know, because I had to go clean across home and came back before that 5:02.

Q. You think you went over home, do you, and came back before the train pulled in?

A. I know I did.

Q. Anyway you went down the track, and when you came back you went on to the platform and stayed there until this train came in, or until you fell off?

A. No such thing, no such thing.

Q. What bridge was it you said you sat down on?

A. When I came back from home.

Q. Is that the bridge crossing Big Creek?

A. Yes.

Q. How far west of the platform would you say that bridge is?

A. Oh, it might have been five or six hundred feet.

Q. Isn't it a quarter of a mile?

A. No, it ain't a quarter of a mile. It may be four or five hundred feet, maybe; I don't know.

Q. And you came back then onto the platform, and sat on a trunk that was there?

A. After they left us there off of the speeder I walk a little beyond that bridge, and I come back—

Q. Well, Bart—

MR. CORKERY: I object to counsel badgering the witness and cutting him off in his answers, if the Court please.

MR. KORTE: Of course, I don't want the witness to run off into the wilderness, Your Honor.

Q. When you were unloaded onto the platform there at Herrick by the speeder men you and Wallace La Branch and McDowell went west along the track?

A. Neither of them came with me.

Q. When you got off the platform, then Frank La Branch came down to the platform there, and started berating his brother because he was drunk, isn't that so?

A. He might have after I left the platform, but I never heard no word.

Q. You walked west, did you?

A. I walked west until I got beyond the bridge.

Q. When you came back from that trip you went back onto the platform?

A. I went on the platform, because I had to go beyond the platform before I could come to where my land is.

Q. When you came back on the platform you saw these boxes and the trunk, didn't you?

A. There was nothing there when I come back.

Q. How?

A. When we got off there was none there, and I walked toward the bridge; there was no such thing

Q. These boxes and the trunks were the La Branch's, that they had put there? They were going away, they were going to Salem, Oregon, their old home, weren't they?

A. Yes.

Q. You know that, don't you ?

A. Yes, sir.

Q. They were going away for good?

A. Sure. I don't know whether they were going away for good, but—

Q. You went on the platform and sat down on the trunk?

A. I never sat down on that trunk.

Q. You didn't sit down on anything?

A. No.

Q. And didn't you, while sitting there or standing there, have words with Frank La Branch over the \$10 that you owed him on the hay deal that you were in with him?

A. I went home---

Q. Answer that question yes or no. Did you have words with Frank La Branch?

A. No, I never had no word with the La Branch boys.

Q. You owed him though \$10, didn't you? Answer that yes or no.

MR. CORKERY: I object to that.

THE COURT: Overruled.

MR. KORTE: Q. You owed him \$10, didn't you, that day you were hurt?

A. I didn't owe him no \$10.

Q. And he wrote a receipt out for the \$10, and you paid him the \$10, isn't that right, that day?

A. No.

Q. Whatever you owed him that day you paid him, and he gave you a receipt for it?

A. He never gave a receipt.

Q. Did you pay him what you owed him that day before he left?

A. I had to pay \$5 to a man by the name of Glover off of that \$10, and then there was another \$5 that I was to send to him.

Q. And you borrowed the \$5 from Jim Peters, the man that lives there in the house with you, or did live with you?

A. No, I never borrowed nothing from nobody; I had money in my pocket all the time.

Q. You borrowed the \$10 in this way, \$5 from Jim Peters, and \$5 from another man?

A. No, no, no.

Q. And while Frank La Branch was having the words with you about getting this \$10 and giving you the receipt, you stood up from this box or trunk you were sitting on, and floundered around and fell off of the platform in that way, did you or did you not?

A. I did not.

Q. Of course you don't know what took place after you fell down, do you?

A. Sure I do.

Q. You were unconscious. Now when you came there on to the platform from Marble Creek, it was broad daylight, wasn't it?

A. Yes, it was in the afternoon along about 3 or-----

Q. Who was this man that you were going to do some business for at Plummer? What was his name?

A. Hank Robinson.

Q. Where does he live?

A. Well, he had a place up on the creek.

Q. Is he living there now?

A. He is dead.

Q. When did he die, Bart.

A. Last March.

Q. After you brought this suit?

A. Sure.

Q. What business were you going to do for Hank Robinson, who is now dead, at Plummer? You said you were going to Plummer to do some business for Hank Robinson. What was that business?

A. Well, I was going to get a hog for myself, pork for the winter, and he told me if I go to be sure and let him know; he was going to buy one, or such a matter. That is why I went to meet him there when I met him there on that bridge.

Q. And the two of you sat down there together?

A. Yes.

Q. He was the man you sat down with on the bridge?

A. Yes.

Q. You say the train came in there upon which you were going west to Plummer about 6:30 or 7 o'clock, is that so?

A. Might have been 6 or after 6, or such a matter, yes.

Q. Let us have it as definite as you can remember it.

A. That is as near as I can come to it. I can't say just exactly the time, but it was after 6, or maybe a little later.

Q. Well, then, you say they never had any railing about this platform since they moved the building away, is that right; they never had put a railing on there from the time they moved the building away until you were hurt?

A. No, sir, never had.

Q. They never had a railing there?

A. Never had a railing.

Q. How do you know they never had any railing there?

A. I know because I travel often enough right across from my place.

Q. You knew that very well, didn't you?

A. I knew it.

MR. KORTE: That is all.

RE-DIRECT EXAMINATION by

MR. CORKERY:

Q. Have they since put a railing there?

A. They have put a railing---

MR. KORTE: Wait a minute. It is not re-examination, and it is immaterial and irrelevant, Your Honor.

THE COURT: Sustained.

MR. CORKERY: Your Honor, there was a reason that occurred further back in the examination. Counsel asked what the conditions in and about that depot were before the accident occurred and after the accident occurred. We wish to show on the question of a railing whether there was one or was not, after the accident occurred, and if he is allowed to go into that---he brought that out himself, Your Honor, as to the conditions in and about that depot, the selling of tickets, and people stopping there, after the accident occurred. If he has done that with reference to those facts, after the accident, can we not show as to the condition of this railing after the accident?

THE COURT: What do you want to show it for?

MR. CORKERY: It was a dangerous situation and they recognized it.

THE COURT: That is wholly immaterial. The objection is sustained.

MR. CORKERY: Q. Mr. Chamberlain, why did you have to pole across the river there to make the train? Why was it necessary to pole to make the train?

A. At the time that I had to pole?

Q. Why did you have to pole? Why couldn't you paddle?

A. Well, it is swift water, swift water from my place until you get a certain distance, to where I land, and I have to use a pike pole.

Q. How long a pole is that?

A. Oh, that might be ten or twelve feet long.

Q. And you stick that down on the bottom of the river?

A. Yes, and push on that.

Q. What would happen if you paddled across there at that point?

A. You can't very well paddle in swift water.

Q. What would happen if you would attempt to paddle?

A. You would be drifting down and couldn't make no headway.

Q. How far beyond the depot would you land?

A. Just almost across.

Q. But I say if you paddled and didn't use your pole, where would you land at?

A. Oh, you might land away down below.

MR. CORKERY: That is all.

MR. KORTE: No further questions.

MR. CORKERY: Q. Mr. Chamberlain, I will ask you, at the time you attempted to take the train there, and fell from the platform, what was your condition as to being sober or otherwise?

A. I was sober, which I am a sober man.

MR. CORKERY: That is all.

THE COURT: I will excuse the jury until 2 o'clock this afternoon. Gentlemen of the jury, be careful to avoid coming in contact with outside in-

fluences, and keep yourselves aloof from outside influences or coming in contact with people who may be interested in this case. You may be excused until 2 o'clock.

An adjournment was accordingly taken until 2 p. m., Thursday, June 7, 1917.

2 p. m., Thursday, June 7, 1917.

FRANK LA BRANCH, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. CORKERY:

Q. State your full name.

A. Frank La Branch.

Q. Where do you reside?

A. Herrick, Idaho.

Q. Are you acquainted with the plaintiff, Mr. Chamberlain?

A. Yes, sir.

Q. I will ask you if you saw him there at the depot on the evening of November 15 last?

A. Yes, sir.

Q. Were you there when the west bound train pulled in?

A. Yes, sir.

Q. About what time did that train arrive there?

A. Between 7 and 8, I should judge.

Q. And what was the condition of the night there as to being dark or otherwise?

A. It was rather dark.

Q. When did you first see Mr. Chamberlain at that place?

A. Just as the train was about half a mile away.

Q. And did you have any talk with him there on the depot platform?

A. Just was going to shake hands with him as the train was coming, and he told me he was going to ride down a ways.

MR. KORTE: I move to strike that answer out as hearsay.

THE COURT: Yes.

MR. CORKERY: It might be a part of the occurrence there.

THE COURT: Oh no.

MR. CORKERY: Q. Just go ahead and tell what happened there.

A. Why, the whole night long, or-----

Q. Just the whole occurrence as you know it.

A. The train was coming, and he come up the track, and I was going to shake hands with him and bid him goodbye, and he said-----

Q. Not what he said to you, but just what occurred there.

THE COURT: What did he do?

A. He walked on by me, and by that time the train was coming around the curve, and I was looking up the track to watch the train come in, and I see him fall off the platform.

Q. You say he shook hands with you just prior to that?

A. Yes.

Q. After he shook hands with you what did you do?

A. I stood there and watched the train pull in.

Q. What other thing occurred as the train pulled in?

A. Then I went down to see how bad he was hurt. I straightened him up and seen a cut on his head, and felt to see if his arms or legs was broke. I couldn't tell whether they was or not, but I didn't think they was. I called for somebody to come down and help me, and my wife come down, and she held the lantern while I looked at his head, and then I told her to get up and get on the train with the kids, and the train was about to pull out, and I left him there, and as I was going I met a couple of fellows and told them to go and look after that man down there, that old Bart was hurt, and I went and got on the train myself.

Q. About how long did you see him and talk with him from the time you first noticed him until he fell off?

A. Not over a minute.

Q. What was the condition of that platform there that day?

A. It stood on that day just about like it stands now.

Q. What was that?

MR. KORTE: Its present condition, Your Honor, is immaterial. There is no question but that there was no railing there.

THE COURT: Upon counsel's statement to the

jury, I assume there is really no issue between you as to the platform at that time?

MR. CORKERY: In the pleadings it was-----

THE COURT: It was admitted in the opening statement, and I presume it is admitted now, that there was no railing there?

MR. KORTE: Yes.

MR. CORKERY: They also deny the maintaining of it as a station there after the removal of the depot.

THE COURT: You can go into that.

MR. CORKERY: Q. What was the condition of the grounds and depot there after the removal of the depot?

A. After the removal of the depot there was this platform left there.

THE COURT: That is conceded. There is no question of that.

MR. CORKERY: Q. Was there any station maintained by the company there after the removal of the depot? Was it maintained as any stop or station by the company?

A. It was.

Q. Just state what you know about that.

A. All I know is that I would get on the train and pay cash fare leaving there, and going to there I would buy a ticket.

Q. Leading to Herrick, you bought tickets leading to that point?

A. Yes.

Q. And you took the train-----

A. And paid cash fare when I left there.

Q. How frequently did you do that after the depot was moved?

A. After the depot was moved?

Q. Yes, about how many times have you done it?

A. Oh, not over six or eight times.

Q. What was Mr. Chamberlain's condition there as you observed him, as to being sober or not?

A. When I saw him he was sober.

MR. CORKERY: I think, if Your Honor please, that we should be permitted to show any statement of Mr. Chamberlain that he was about to take passage, to become a passenger, as the only possible method of showing his intention to become a passenger.

THE COURT: Well, I don't think it is highly important. However, if you-----

MR. KORTE: Pardon me, Your Honor. He is asking for the statement which Chamberlain made to the witness as to what he was going to do.

MR. CORKERY: I don't care about that. As to his intention, whether or not he had any intention-----

MR. KORTE: That is clearly hearsay. It is self-serving in the way that it is brought out this way.

MR. CORKERY: That is the only way we could show the intent.

MR. KORTE: It comes within the rule of self-serving declarations, Your Honor.

MR. CORKERY: I would suggest that these dec-

larations coming right at the vital time, when he didn't know he was going to be hurt or anything of the kind, would be very material, and we also want to show what he meant by handshaking,---that he intended to go on.

MR. KORTE: You brought that out yourself.

THE COURT: I think I will permit you to show it.

MR. CORKERY: Q. State what statement he made in that connection about going on the train or intending to go on the train.

MR. KORTE: We object as hearsay and self-serving and incompetent.

THE COURT: The objection is overruled. You may have an exception.

Q. What did he say as he shook hands with you?

A. He said he was going on through with me a ways on the train, as far as Plummer junction.

MR. CORKERY: That is all.

CROSS EXAMINATION by

MR. KORTE:

Q. You say you saw him just that moment of time that you attempted to shake hands with him, and he said he was going along with you?

A. I see him when he got off the speeder, from the house.

Q. And he was drunk then?

A. No, sir, not that I know of. I wasn't over there.

Q. But this particular time when you saw him on

the platform, when you were about to take the train, was just a moment of time, wasn't it?

A. Yes, sir.

Q. How do you know he was sober then in the dark?

A. Because I was going to shake hands with him, and by all appearances he was sober.

Q. That is all you know about him, is what you saw of him in the dark and what you said to him and what he said to you, as you have stated here?

A. Yes, sir.

Q. I wish you would examine Defendant's Exhibit No. 1, for identification, read it over fully, and state whose signature is at the end of it, if you know.

(Paper marked DEFENDANT'S EXHIBIT NO. 1.)

MR. CORKERY: Are you asking for the signature?

MR. KORTE: Yes.

MR. CORKERY: Just look at the signature, I will suggest.

MR. KORTE: I asked him to read the contents over and identify the signature. I am cross examining him, Your Honor.

MR. CORKERY: We object, of course, to showing anybody else's signature. If it is some statement he signed it might be proper, but as to anybody else's I don't think it is proper.

MR. KORTE: Just let him read it. He is getting along all right.

Q. Is that your wife's signature?

A. Yes, sir.

MR. CORKERY: We object to that and move to strike the answer, as being entirely immaterial.

MR. KORTE: Q. Your wife was present-----

MR. CORKERY: Just a moment. I would like to have a ruling.

THE COURT: The objection is overruled.

MR. CORKERY: An exception.

MR. KORTE: Q. Your wife was present on the platform there at the time you shook hands with him, as you claim?

A. Yes, sir.

Q. And the boy named Greenwood was there, was he, with you?

A. I don't know the gentleman.

Q. Do you know a little boy by the name of Greenwood?

A. No, sir.

MR. KORTE: Will you stand up, son? (Boy stood up in court room.)

Q. Do you know that boy?

A. Yes, sir, I know the boy.

Q. He was there on the platform with you?

A. I don't remember seeing him.

Q. He went down below with you and your wife when you went down to see what happened to Chamberlain?

A. I come down there while he was there.

Q. And he carried the lantern down?

A. No, sir; my wife carried it down.

Q. He was down there with you and your wife?

A. He come down there after I was there.

Q. And you told him to get some men to take care of Bart Chamberlain, that you had to catch your train, that the train was then in?

A. I don't remember telling him that.

Q. But anyway you found Bart Chamberlain sitting on either a trunk or a box when you went on the platform?

A. No, sir.

Q. And after reading this statement over do you still insist that Bart Chamberlain was not drunk?

A. Yes, sir.

MR. CORKERY: We object to that. It is an obvious attempt to inject into this case somebody else's testimony. If they want the wife's testimony let them call the wife.

THE COURT: The form of the question is objectionable. You may ask him whether he still insists-----

MR. KORTE: Q. Do you still insist on saying that Bart Chamberlain was not drunk, after reading that statement over?

MR. CORKERY: I object to that last part.

THE COURT: Sustained.

MR. KORTE: Q. Now you were at Marble Creek too that day, wern't you?

A. No, sir.

Q. Your brother was?

A. Yes.

Q. Wallace?

A. Yes.

Q. Do you remember when he came down on the motor car with Chamberlain and the other man, whoever he was, or two men?

A. Yes.

Q. You remember when he came on the platform there, or wherever it was where they unloaded him?

A. I never seen him get off.

Q. And you came down there and chided your brother because he was drunk?

A. No, sir.

Q. And that you had the things ready to go and that you were ready to take the train, and that he, being in that condition, you would probably be unable to take the train,---you never had any words like that with your brother?

A. No, sir.

Q. How near were you to Bart Chamberlain at the time he came off the motor car at the time he and your brother and the other men came down there?

A. From my house to the platform, about a hundred and fifty yards.

Q. You had taken your things down to the platform to be put on the train?

A. Yes.

Q. And those were the boxes that were there to be put on the train?

A. Two trunks.

Q. No boxes?

A. I didn't have none.

Q. Were there any there?

A. I never seen any.

Q. So, whatever was there, there was two trunks?

A. Yes, sir.

Q. When you were bidding him goodbye, as you say, your wife was on the platform?

A. Yes, sir.

Q. And your brother Wallace?

A. Well, I don't know whether he was or not.

Q. Where is Wallace now?

A. He is in Oregon.

Q. And who else was on the platform besides you two and Chamberlain?

A. Well, sir, I don't know. There was somebody else but us there, but I don't know who they were.

Q. Did they take the train or not?

A. I couldn't tell you.

Q. You went away that night with your family back to your home at Salem, Oregon?

A. We went to Spokane that night.

Q. And then to Salem, Oregon?

A. Yes.

Q. And then you remained there in Salem, Oregon, how long?

A. About four months.

Q. And you came back into the Marble Creek country alone and left your wife and children at Salem, Oregon?

A. No, sir, I went on the Columbia River and worked.

Q. I mean you got back into the Marble Creek country alone, and left your wife and children at Salem, Oregon?

A. Yes, sir.

Q. And when did she come to the Marble Creek country and meet you?

MR. CORKERY: We object to that as immaterial.

MR. KORTE: It will be material, Your Honor.

THE COURT: Overruled.

A. How long has it been since she has been back?

Q. Yes, at Herrick, where you are now living.

A. I think it is four weeks today.

Q. And when she came back, I will ask you whether or not you didn't have this talk, that she said to you that she had given this statement which I have shown you, that you told her, chided her for telling the truth, and that she was told to tell the claim agent of the railroad that what she had put down in this statement wasn't true,---did you have that talk with your wife?

A. No, sir.

Q. What time did you see Bart Chamberlain, or what time was it that this motor car arrived at Herrick?

A. It was between 3 and 5, I should judge.

Q. You don't know whether it was nearer 5 than 3, do you?

A. No.

Q. You wouldn't want to be certain about it?

A. No.

Q. And this train, in order to get on at that place you had to flag it this night with the lantern?

A. I don't know whether anybody flagged it or not.

Q. Didn't they have a lantern there for that purpose?

A. They had the lantern there for that purpose, but the lantern was sitting in between-----

Q. This place at Herrick was what you would ordinarily call a flag station, since the station was moved?

A. You wouldn't exactly call it that, because if they see people standing on the platform it will stop.

Q. And when it is dark you would have to flag them with a lantern or something of that kind?

A. Yes, sir.

Q. I will ask you whether or not Wallace was not drunk at the time he came down there with Bart Chamberlain on that speeder that day when you met them?

A. I couldn't say that he was.

Q. You wouldn't say he wasn't?

A. I couldn't say he wasn't when I was over to the house.

Q. He had liquor in him, didn't he?

A. I couldn't say that he did.

Q. Don't you know he had been drinking?

A. No, sir.

Q. Do you know when a man has liquor in him?

A. Yes.

Q. Haven't you seen a man under the influence of whiskey?

A. Yes, sir.

Q. So that you are able to tell?

A. Yes, sir.

Q. You say your brother had no liquor in him when he got off of the motor car or speeder?

A. He didn't look like it to me.

MR. KORTE: That is all.

MR. CORKERY: That is all.

OWEN D. PLATT, produced at a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. CORKERY:

Q. State your full name, Doctor.

A. Owen D. Platt.

Q. You are a physician and surgeon?

A. Yes, sir.

Q. Residing where?

A. St. Maries, Idaho.

Q. From what university did you graduate?

A. The University of Nebraska.

Q. The medical department there?

A. Yes, sir.

MR. KORTE: We will admit that the doctor is competent.

MR. CORKERY: Q. You have been in the general practice in this State?

A. Yes, sir.

Q. And also have a general hospital up there?

A. Yes, sir.

Q. Did you care for Mr. Chamberlain when he got hurt, along about the fifteenth of November, or shortly after?

A. Yes.

Q. Where did you first see him after he got hurt?

A. I saw him at St. Maries on the sixteenth of November.

Q. Was he brought down there to your place?

A. Yes.

Q. What time of day, do you remember, that he was brought in on the sixteenth?

A. He was brought in on a caboose. I think he came in about 3 o'clock. I wouldn't be sure as to the time.

Q. How did they bring him in from the caboose, do you remember?

A. He was on a stretcher in the caboose, but I had a wire to meet the caboose at the first street crossing, and we packed him out on the stretcher and put him in an automobile and hauled him up two blocks to the hospital.

Q. Did you make an examination after he came to the hospital?

A. Yes.

Q. How shortly after he came did you make the examination?

A. As soon as we got him ready.

Q. State the condition that you found that man in at the time of that examination.

A. In regard to injuries?

Q. Yes.

A. Well, he had a dislocated right shoulder, and some fractured ribs, and skinned up and bruised up about the head and shoulders and arms.

Q. Just take the shoulder there. Was there any breaking of bones about the shoulder?

A. I think the joint was broken where the bone was dislocated.

Q. State his general condition as to strength or weakness when you examined him, and general bodily vitality.

A. Well, of course, you couldn't tell very much about that. He was pretty sick and more or less delirious at that time.

Q. How long did that delirious condition remain?

A. About six or seven days.

Q. And state how many ribs were involved in the fractures or breaking.

A. As near as I could make out, there was three fractured ribs, two of them in front and one back.

Q. Were any of these three ribs broken in more than one place, or fractured in more than one place?

A. I think not.

Q. Just take each rib, if you can, and tell where the fracture or break was.

A. The sixth and seventh ribs were fractured in front, at what they call the cartilagenous attachment, and the eighth rib was fractured posteriorly.

Q. Now, Doctor, was there any pressure by those broken ribs upon the lungs, in your opinion?

A. Yes, sir, I think there was at the time.

Q. What did that pressure result in?

A. It resulted in the development of pneumonia in a few days.

Q. Anything else?

A. The pneumonia was followed by an abscess of the lung.

Q. State how you know there was any abscess there.

A. About the sixth or seventh day he was there the abscess ruptured into the bronchial tubes and he spit up the pus.

Q. Can you tell the jury,---on those sixth and seventh days, you say it was one of those two different days?

A. It started on the sixth or seventh day; I don't remember just which.

Q. How long did it continue?

A. He was spitting up pus more or less during all the time he was in the hospital. It wasn't entirely cleared up when he left.

Q. During those first two days after it broke, how much pus would you say he spit up during those first two days?

A. I should say at least a quart or a little more.

Q. All together or at several times?

A. Several times.

Q. Just take in two days, how much would you say he spit up?

A. I should judge a quart or a quart and a half.

Q. On each day?

A. That is the entire amount for the first two or three days.

Q. Was this spitting continuous or did it come all of a sudden?

A. Well, it would stop at intervals, and then come quite an amount at a time.

Q. At the first was there any blood in this corrupt matter that was spit out?

A. Well, he spit bloody sputum before this abscess ruptured. There was no blood mixed with the pus.

Q. State whether his condition was serious or not serious at the time you examined him.

A. It was pretty serious at that time.

Q. How serious?

A. Well, I didn't think there was a chance of him getting well.

Q. How long did he remain at the hospital?

A. He was there three weeks.

Q. After that, Doctor, where did he go?

A. He went down to his nephew's.

Q. Did you attend him there?

A. No, I didn't attend him there, but I did attend him. He would get up to town on the boat afterward. He had his arm bandaged up and his ribs put up.

Q. About what length of time was he under treatment, combined, while he was in the hospital and after he left?

A. He has been under my treatment off and on ever since the injury.

Q. Is he still under your treatment?

A. Yes, sir.

Q. Judging from the examination that you made at the time he first came to the hospital, together

with the other examinations that you made in attending him, and also taking into consideration the fact that he fell a distance of ten or fifteen feet from a platform, and in his present condition, the last time you examined him, what would you say as to whether his condition with reference to the shoulder is permanent or not, the injury there?

MR. KORTE: That, Your Honor, is objectionable. The Doctor can give the facts, rather than his opinions.

MR. CORKERY: He said he attended him right up to date.

Q. I will just ask you an additional question. Did you examine him today?

A. No, sir.

Q. Were you present at his examination?

A. Yes, sir.

Q. Now go on and state whether or not this condition is permanent, as to the shoulder?

A. What?

Q. Is the injury to the shoulder which you described there a permanent injury or not?

A. Yes.

Q. You mean by that what,---that it is permanent?

A. Yes, sir.

Q. Now answer the same question, taking into consideration the same facts,---I will ask you as to whether or not the injury that you have spoken of, to the lung and to the ribs there,---I mean now particularly the ribs as it affects the lung there,---whether

that injury to the lung, or the condition of the lung is permanent?

MR. KORTE: That is assuming something that don't bring out the facts. It seems to me the doctor could tell what his present condition is. I object to the question.

WITNESS: I could tell that too.

THE COURT: I hardly know what you mean by asking whether a condition is permanent. Of course any fracture of a bone is permanent in one sense.

MR. CORKERY: I will withdraw that, and ask a question that will clear that up.

Q. What would you say his present condition is as to his lung?

A. Well, as a result of that pneumonia and that abscess in the lung, there was more or less adhesions formed between the pleura and the lung, that are permanent.

Q. Just describe what you mean by adhesions between the pleura and the other part of the lung there, that you speak of.

A. I don't know that I can do it very well. In any condition where there are two surfaces together, if there is an inflammatory condition takes place, bands of fibrous tissue will form between those, and they call that adhesions.

Q. Now I will ask you, taking into consideration the facts, that he fell this distance of ten or fifteen feet from this platform, together with your first examination, and your subsequent attendance upon him, and the facts you learned there, and taking into

consideration his present condition, as you have described it, will this condition in all reasonable probability continue to be permanent as to the lung?

A. Yes, sir.

Q. What was your bill there up to date against this man, hospital and doctor bill?

A. One hundred fifty-five dollars.

MR. CORKERY: You may cross examine.

CROSS EXAMINATION by

MR. KORTE:

Q. Dr. McCarthy examined him today noon, did he not?

A. Yes, sir.

Q. And you were present?

A. Yes, sir.

Q. And at that examination, Doctor, you went into the mobility of his lungs, did you not?

A. I did not.

Q. Did Doctor-----

A. Yes.

Q. And he marked it with indelible pencil?

A. Yes, sir.

Q. And found them normal?

A. He might have found them normal. I examined him last week, and I didn't find them normal when I examined them.

Q. And you also found the mobility of the shoulder-----

A. Lessened.

Q. Isn't the man in a fine physical condition for a man of his age at this time, Doctor?

A. He has got a good shoulder for the injury he received at the time.

Q. That is the broken part you spoke of?

A. Yes, but he has less mobility of the shoulder joint at the present time.

Q. He could get his arm up over the head, could he not?

A. Yes, but not easily.

Q. Didn't he take his shirt off and show the mobility of the shoulder?

A. He took it mostly off with the left arm though.

Q. You took no X-rays of the ribs at all?

A. No, sir.

Q. It is a difficult thing to determine a fractured rib without an X-ray, isn't it?

A. No, sir.

Q. You think it is an easy matter?

A. Easy, very easy.

MR. KORTE: That is all.

MR. CORKERY: That is all.

CHARLES E. McDOWELL, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. CORKERY.

Q. State your full name to the jury.

A. Charles E. McDowell.

Q. And you reside where?

A. Well, Marble Creek.

Q. You are acquainted with Mr. Chamberlain, the plaintiff?

A. Yes.

Q. Did you see him upon the day of the fifteenth of November last?

A. Yes, sir.

Q. Where did you first see him upon that day?

A. I see him at Olson's store, in Marble Creek.

Q. In Marble Creek?

A. Yes, sir.

Q. That is on the Milwaukee line?

A. Yes, sir.

Q. And about what time of the day did you see him there?

A. Oh, 11 o'clock, around there.

Q. And did you come on down to Herrick with him?

A. Yes, sir.

Q. And what time did you arrive at Herrick?

A. On, around 4 o'clock, between 3 and 4.

Q. And did you see him later again that day?

A. Just once.

Q. Where?

A. When I went out to gather him up.

Q. Where did you find him then?

A. Laying down beside the platform.

Q. Will you describe the condition of the place where you found him?

A. It was off from the platform at a place between the two tracks, probably around between eleven and thirteen feet fall.

Q. Down from the platform?

A. Yes.

Q. What was the condition of that place there, twelve feet down, the bottom of it, what was the condition of it, as to being smooth or containing obstacles?

A. Well, there were logs laying there.

Q. Anything else?

A. Two or three logs, stumps.

Q. Any rocks in there?

A. Rocks, yes, sir.

Q. And you found him there about what time?

A. After the train, westbound train left.

Q. About what time was that?

A. Well, between 7 and 8, I guess,---around 7.

Q. The train pulled in at that time?

A. Yes.

Q. And you found him about how long after the train pulled in?

A. Probably five to eight minutes.

Q. Now what condition was he in when you found him?

A. Well, he was knocked out.

Q. Was he conscious?

A. No, I couldn't say he was; he couldn't talk.

Q. Did you attempt to talk with him?

A. Tried to, but there was no use.

Q. What did you do with him, if anything?

A. Picked him up and tried to take care of him.

Q. What did you do?

A. Took him---went to take him to the hotel, and there wasn't room, and we put him in a house beside it.

Q. Did you see him fall? Were you at the station when he fell?

A. I was not.

Q. Where were you then?

A. Over in the hotel.

Q. What attracted your attention to the man?

A. This small boy came running over and told us that there was a man hurt, and, of course, we went over.

Q. Now, what was Mr. Chamberlain's condition, as far as you observed him, from the time that you came from Marble Creek down during the day and the time you found him there in the evening, what was his condition as to being sober or not?

A. I should say he was sober.

Q. You got off of the speeder at Herrick?

A. I did.

Q. What did Mr. Chamberlain do at that time, if anything?

A. He said, "I am going away-----"

MR. KORTE: I object to that, Your Honor, as being remote.

THE COURT: When was that, at what time?

MR. KORTE: When they got off the speeder at 4 o'clock.

THE COURT: The objection is sustained. The answer will be stricken out.

MR. CORKERY: The question was, what did Mr. Chamberlain do, in which direction did he go after getting off the speeder, if you observed?

A. I turned around and went off the platform, to

go home. He says, "I am going home," and he turned and went off the platform the other way.

Q. Which way did he go?

A. He went across the platform and over the track.

Q. Did he go in the direction of his home?

A. Yes, in that direction.

MR. CORKERY: That is all.

CROSS EXAMINATION by

MR. KORTE:

Q. Who was there at Marble Creek with you, Mr. McDowell, with you and Chamberlain? Who else was there at Marble Creek at 11 o'clock, about the Olson store?

A. I suppose some of the Olson family were there.

Q. Well, give us some of the lumber jacks.

A. I couldn't tell you any.

Q. You didn't know anyone there then except yourself and Chamberlain, was that all you knew there?

A. Well, in the store I never paid no attention to who was there.

Q. Who did you see around there, that is the point,---anyone you knew? Did you know anyone around there, of the men, either working in the woods or on the railroad or anywhere else?

A. At that immediate time, you mean?

Q. Then or after, before you started down home.

A. While I was there I had met everybody around Marble Creek at one or some time during the morning.

Q. Who were they? Give us the names.

A. Well, such as Glover, and if Olson was there I met him, and I see Mr. Hodges, and probably Mr. Kirk there at the depot as I went around.

Q. Give us a few lumber jacks now, if you can.

A. I couldn't name any.

Q. Were there any that you didn't know?

A. There weren't any that I did know or didn't, that I can refer to.

Q. So that the only persons you saw at Marble Creek on that day are the ones you just mentioned, is that right? You saw Wallace La Branch there, didn't you?

A. I don't recollect of seeing him. He may have been there. I didn't run into him.

Q. You didn't see him at all that day, did you?

A. I don't recollect seeing him.

Q. All that day?

A. I may have in the morning. You were referring to in the morning?

Q. I am speaking of Wallace La Branch. Did you see Wallace La Branch, the brother of Frank La Branch, at Marble Creek, at noon, or any time in the afternoon, at Marble Creek?

A. If it was Wallace La Branch-----

Q. Answer the question, or can't you do it without explanation? You know Wallace La Branch, do you not, or did know him at that time?

A. Well, I couldn't say whether I knew Wallace or Frank separate, but one of the boys came down on that speeder.

Q. Was it this one here that just testified?

A. I couldn't tell you.

Q. Why do you hesitate about telling us?

A. Because I don't know.

Q. Can't you remember a man's face when you see it?

A. I didn't pay that much attention to it.

Q. You have been around Marble Creek and Her-rick for a number of years, haven't you?

A. Long enough, yes.

Q. And you have been there during all the time that the La Branch boys were there?

A. Never in close contact with them.

Q. Anyhow, whatever La Branch it was, one of them came down on the motor car or speeder with you and Bart Chamberlain in the afternoon?

A. Yes.

Q. And you flagged the motor car some distance out from Marble Creek, to get on it, the three of you?

A. No, sir.

Q. Where did you get on the motor car?

A. I got on the motor car at Marble Creek.

Q. At the station?

A. At the motor house.

Q. Where is that with reference to the station, west or east of it?

A. West.

Q. How far west?

A. A hundred and twenty-five yards.

Q. A hundred and twenty-five yards?

A. Yes.

Q. And at that same time when you got on, this La Branch boy or man and Chamberlain got on, did they not? The three of you were there together, going down the track?

A. I think so. I wouldn't just say for sure.

Q. Why do you say "I think so."?

A. I wouldn't just say for sure whether La Branch got on at the time I and Bart did.

Q. Anyhow, the three of you came up together, on the track, at one time, either on the speeder, or when?

A. Yes, sir.

Q. And you were together when you were at Marble Creek, before you got on the speeder, the three of you?

A. No, sir.

Q. And this La Branch was drinking, wasn't he?

A. Not that I know of. We weren't together.

Q. Did you see him drink at all at Marble Creek?

A. No, sir.

Q. Did you see Bart Chamberlain take a drink?

A. No, sir.

Q. Did you see him with a flask, or the La Branch man with a flask of whiskey, when they got on the motor car and rode down to Herrick?

A. No, sir.

Q. You say they took no drink on the motor car at all, to your knowledge?

A. Not to my knowledge.

Q. Could they have taken it without you knowing it?

A. I hardly see how.

Q. Didn't they load the La Branch man, because of him being drunk, on the side or in the trough of the motor car, where they keep the tools, on account of his being drunk?

A. No, sir.

Q. He sat on the motor car, did he?

A. Yes.

Q. Where?

A. I think he was sitting on that board or space, whatever it is put there for.

Q. And when you got further down the track you run on to Black Joe and picked him up?

MR. CORKERY: I object to that as improper cross examination, and also for the further reason that we had nothing to do with Black Joe or his intoxication or quarrel there. It doesn't prove that this plaintiff was in any such condition.

THE COURT: Overruled.

MR. KORTE: Q. You picked up Black Joe?

A. Yes.

Q. He was drunk?

A. They did.

Q. He was drunk?

A. I couldn't say.

Q. It is hard for you to tell when a man is drunk, is it?

A. I didn't pick him up, sir.

Q. I asked you whether he wasn't drunk or not.

A. I couldn't say.

Q. You wouldn't say whether in his condition he was drunk or not?

A. No, I couldn't.

Q. What was his condition?

A. Well, it seems he takes fits of some kind, and I couldn't say whether he had a fit—

Q. You have known Black Joe there for years, haven't you?

A. I have heard them talk about him.

Q. And you have met him?

A. I have met him, yes.

Q. Isn't it because he gets whiskey into him that he has these fits?

A. I couldn't say.

Q. You then had the two motormen, yourself, one of the La Branchs, Bart Chamberlain, and Black Joe on the car going on to Herrick?

A. No, sir.

Q. How did you get down?

A. They took two of us, I guess, took Black Joe down to his place just a little ways.

Q. He didn't go to Herrick at all, did he?

A. No, sir, not on the car.

Q. You wouldn't say whether he got to Herrick or not?

A. No, I would not.

Q. What two did they take to Herrick? Were you one of them?

A. Yes, sir. I went the whole way.

Q. Who was the other one?

A. Mr. Chamberlain.

Q. What became of the La Branch man?

A. He rode on down.

Q. And he came and got off at the platform with Chamberlain and yourself.

A. I think so.

Q. And the other brother then came down to the platform didn't he?

A. I didn't see him.

Q. You went on then toward your home?

A. I went right toward where he would come from, if I had seen him.

Q. You went up toward the hotel then?

A. Yes, sir.

Q. And stayed there that night?

A. Yes.

Q. And, of course, when you say the time when the train got in there, the time when the motor car got in there, it is just simply your recollection about it?

A. It was somewhere about 4 o'clock. I am not positive of the minutes.

Q. You wouldn't say whether it was 4 or 5?

A. It was closer to 4 than it was to 5.

Q. It was after 4?

A. Yes, sir.

Q. And the same thing with reference to the train, you say it came in between 7 and 8. Was it closer to 7 than 8?

A. Closer to 7.

MR. KORTE: That is all.

RE-DIRECT EXAMINATION by

MR. CORKERY:

Q. Was that station there maintained by the company as a station after they moved the depot,

picking up passengers and discharging passengers, do you know?

A. Yes, sir.

Q. Did you take passage there at any time after the depot was moved?

A. Just the other evening.

Q. Well, between the date of moving the depot and around about the time of the accident, did you board trains there, or see people board them, and get off.

A. Two days after the accident I went back to Marble Creek on the train.

Q. Do you know of your own knowledge whether tickets were sold to that point by the company, at about that time?

A. I think they were.

MR. CORKERY: That is all.

WITNESS: I am positive.

RE-CROSS EXAMINATION by

MR. KORTE:

Q. What is your business, Mr. McDowell?

A. Just a common working man.

Q. How long have you been in the Marble Creek country?

A. Since 1912.

Q. And you go back and forth from St. Maries to Marble Creek a great deal?

A. Yes, sir.

Q. Are you a member of the organization known as the I. W. W.?

A. I am not.

MR. CORKERY: We object to that, if the Court please. It is for the obvious purpose, without any foundation of fact, to prejudice this jury, and I ask the Court to instruct counsel—

MR. KORTE: I have a right to ask that question.

MR. CORKERY: Oh, it wasn't in good faith.

WITNESS: No, it wasn't.

MR. KORTE: That is all.

MR. CORKERY: That is all. We rest.

MR. KORTE: I will call Mr. Hodges.

KENNETH R. HODGES, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. KORTE:

Q. Give your full name to the jury.

A. Kenneth R. Hodges.

Q. How old a man are you?

A. Twenty years old.

Q. Where do you live?

A. Auburn, Washington.

Q. What is your business, Mr. Hodges?

A. Feed and grain.

Q. Did you say how old you were?

A. Twenty.

Q. You are engaged in the business of feed and grain at Auburn, Washington?

A. Yes, sir.

Q. At one time you worked for the Milwaukee railroad, the defendant in this case?

A. Yes.

Q. At what business?

A. In the signal department.

Q. Between what points were you working and where were you located?

A. The Idaho division and Coast division and Columbia River.

Q. Where were you stationed at times? Do you recall being stationed at Marble Creek, on the line, in 1916, in October and November?

A. Yes, sir.

Q. Do you know Bart Chamberlain, the plaintiff in this case?

A. Yes, sir.

Q. Do you remember an incident when he fell off of the platform at Herrick?

A. Yes, sir.

Q. And was injured. Do you recall seeing him on the day that he was hurt, at Marble Creek?

A. I do.

Q. Where did you see him around Marble Creek? Tell the jury in the first place about how many inhabitant or buildings there were at Marble Creek.

A. The inhabitants and buildings of Marble Creek are comprised of a store and restaurant, a warehouse, and railroad employes' shanties and residences.

Q. What time of day was it when you first saw him there on the fifteenth of November?

A. I think around about noon, if I remember right.

Q. Who did you see with him, if you remember?

A. Why, a man by the name of La Branch, and Mr. Glover, and another gentleman,—I don't know his name; he is a short fellow they call Mickey.

Q. Did you see any other men around there that you didn't know by name?

A. There was some men from the woods there, but I don't know their names only by nick-names. One was Andy and another one was Hank, and I don't remember their last names.

Q. When you saw them around there, about how long was it that you observed Chamberlain with these men about Marble Creek?

A. The question again, please.

Q. About how long a time was it that you saw Bart Chamberlain there at Marble Creek with these other men during that day?

A. Around about noon, at Marble Creek.

Q. Well, what length of time was it that you noticed them?

A. Oh, I should judge they was there together talking to each other among themselves for about an hour or an hour and a half.

Q. Did you see Chamberlain drinking whiskey there with those men at that time?

MR. CORKERY: We object to that as leading and suggestive.

MR. KORTE: It is almost necessary for me——

THE COURT: Overruled.

A. Why, not right at the store there.

Q. Tell the jury what you saw by way of drink-

ing whiskey, if there was any drunk there, by Chamberlain or the others that he was with.

A. Not right in the Marble Creek store there, no, sir.

Q. Anywhere about Marble Creek, before you started away.

A. Yes, along down toward the right of way I saw a bottle passed around several times among these gentlemen.

Q. Tell the jury whether or not you saw Chamberlain drink from the bottle.

A. Yes, I did.

Q. How often, about?

A. Oh, I can't say; several times.

Q. Do you recall taking lunch or dinner at dinner time at Marble Creek?

A. Yes, sir. I ate my meals there at the restaurant.

Q. Were the rest of those men and Chamberlain there too at the time?

A. Yes.

Q. Was there any drinking going on at that time by him with them?

MR. CORKERY: It is all leading and suggestive, if Your Honor please.

THE COURT: Yes, I think that is leading.

MR. KORTE: Q. What was there going on at that time at the lunch counter or otherwise, with reference to drinking whiskey or coffee or what?

A. From the appearances of drinking——

MR. CORKERY: We object to the appearances.

THE COURT: It may be stricken out.

MR. KORTE: Q. What were they doing?

A. Talking and arguing among themselves about different matters. I didn't pay much attention. I was eating.

Q. What did you do at any time in the afternoon, going west on your motor car to do your work, and when was it you started, and where did you start from?

A. I should judge it would be about along a little before 4, we had a case of trouble that was down just about at that bridge over Big Creek, below Herrick.

Q. That would be a little west of Herrick?

A. Yes, sir. It was a case of just temporary repair, and we couldn't make a permanent repair.

Q. What time was it that you started out from Marble Creek to look up this trouble?

A. Just a few minutes before 4, around 4 o'clock.

Q. Did you notice whether or not Chamberlain was at Marble Creek or had left?

A. They was down the track west of the station.

Q. When did you notice him going down the track, and who was with him, if you know, when they left to go down the track?

A. This was along about 4 o'clock, and about ten minutes before that I started down to the tool house to get the car, down the right of way to the west of the station.

Q. You started down, as I understand, to get the car?

A. Yes.

Q. Tell the jury where the car was?

A. At the station—the tool house is right next to the station there, west, I should judge, a hundred yards probably.

Q. Who did you see on the track when you went down to get the car?

A. Mr. La Branch there, and Mr. McDowell.

Q. Can you tell whether or not Chamberlain was there?

A. There was Mr. La Branch, Mr. Chamberlain, and Mr. McDowell, and one of these men from the woods, named Mickey, I believe it was.

Q. Which way were they going, or were they going any way,—standing still or moving?

A. Toward Herrick, west.

Q. What did you do then with reference to getting on your motor car and getting it out to go west? Just tell in your own way what you did.

A. We started out and picked these men up between Marble Creek station and Pokono siding.

Q. How far is Pokono siding from Marble Creek?

A. Just a little ways; I should judge half a mile or a quarter of a mile.

Q. How did you come to pick these men up there?

A. They had been drinking, and we thought it would be a good idea to take them along.

Q. Go ahead and tell when you came to them what you saw by way of drinking, and what they had with them.

A. What they had to drink was some kind of whiskey, I should judge.

Q. What was it in?

A. It was in a flask. I don't know whether it was a pint or a half pint flask.

Q. What did they do with it?

A. They were passing it around and each taking a drink, that is, all except one man.

Q. Who was that, that didn't take a drink?

A. I didn't see him take a drink every time. That was Mr. McDowell.

Q. Did you see Chamberlain take a drink?

A. Yes, sir.

Q. How often?

A. I can't swear to the number of times. I don't know that he refused any time.

Q. What difficulty did you have in getting them on the speeder?

MR. CORKERY: We object to that as leading.

THE COURT: Yes.

MR. KORTE: Q. What did you do by way of getting them on the speeder?

A. There was one man, Mr. La Branch, we put him in the tray of the car; that is the place for extra tools or anything we want to carry.

Q. Just describe how you put him on that tray?

A. It was very awkward to get on for a sober man, let alone a man that has had liquor. You have to step over two or three pieces of iron. And Mr. Chamberlain went on the rear of the tray, in a tool box.

MR. CORKERY: You say he got on there?

A. Mr. Chamberlain?

MR. CORKERY: Yes.

A. I put Mr. Chamberlain on the rear of the tray, and this man Mickey rode right behind me. Mr. Ernster was on the rear, of course. And Mr. McDowell, I think, was either in the middle of the tray—I am not sure—or between Mr. Ernster and Mickey.

Q. Where did you go when you got them loaded?

A. Started out for Herrick, west.

Q. What did you come to on the way down?

A. We got as far as the end, the west end of the Pokono siding, just around the curve, and we run on to Black Joe and another man there, and it seems that Black Joe had been drinking and had got into one of his fits, and this lumber jack, the way he told us,—when we stopped—he flagged us down,—they had just pulled him off a couple of minutes—

MR. CORKERY: We object to what the other man said.

A. And this man that pulled Black Joe off wished we would take him on down with the load, on as far as his house anyway. But we couldn't do it right then, because we was due to meet a freight then, and we told him we would go on up around the curve, where there was a set off, and we would come back and take him on, as soon as we could, and we did, as soon as the train went by, and when we got back there was a couple of the men,—I think Mr. McDowell and Mickey—I think, took him down to his home. His home lays on a tangent with the Milwaukee track. In the meantime we got set on and started,

and Black Joe come running across the field with his rifle. He could easily beat us to the right of way and we stopped the car, and Mr. Ernster was running the car at the time, and he refused, and we stopped, and some of the men went out ahead and took the rifle away from him, and shot three or four shells out of it. By this time we was pretty near Herrick, and we took Black Joe along with us, and put him in the tray, if I remember right, and we hit a tunnel just before reaching Herrick, and did not like to go through with this load on, and there were two or three to watch aboard, and in case of quick acting they would be in the way, and I am not sure just who we left, but I think we took Wallace La Branch down, and Mickey, first, and then I think we come back and picked the rest up and took them on to Herrick.

Q. Where did you unload them?

A. At the platform at Herrick.

Q. Where did you unload Chamberlain?

A. At the platform at Herrick.

Q. When he got off there how did he walk?

A. An unsteady walk.

Q. Did he remain or not on the platform?

A. As near as I can remember, he went off and sat down, or kind of leaned on these trunks, or whatever was on there, boxes or trunks.

Q. You have seen drunken men in your day, have you?

A. Yes, I think I have.

Q. Tell the jury whether or not when you unloaded Chamberlain on the platform, whether or not he was drunk.

MR. CORKERY: We object to that.

THE COURT: Was he or was he not drunk?

A. Yes, sir, I think he was.

MR. KORTE: Q. Then where did you go, after you unloaded them?

A. We went just a little bit west, to where this trouble was, but on looking at our watches and comparing notes we found out if we would hurry back as fast as we could go to Marble Creek we could beat No. 17 in.

Q. Did you beat 17 in or not?

A. No, sir, we got as far as Pokono siding, and got held up by a freight there.

Q. You are not working for the Milwaukee railroad at this time?

A. No, sir.

Q. How long since have you not been working?

A. I think around February 28,—I am not sure—of this year.

MR. KORTE: You may take the witness.

CROSS EXAMINATION by

MR. CORKERY:

Q. You left that particular work up there, that was the last work you did, signal work, in the vicinity of Marble Creek?

A. No, sir.

Q. How did you happen to know all these people by their first names, so well acquainted with them?

A. Marble Creek was our headquarters. I eat there and stayed there nights.

Q. And you knew all these men pretty well, didn't you?

A. Quite a few by sight and a few by name.

Q. Now you say that you saw these men at the depot in Marble Creek before you started out?

A. No, sir, I did not say I saw them at the depot.

Q. Well, or about the depot?

A. Not right near it, no, sir.

Q. Where did you first see any of them on that day?

A. At the restaurant.

Q. At the restaurant eating lunch?

A. I was eating lunch when I saw them. They was not eating.

Q. What were they doing?

A. They was talking around there and arguing.

Q. Talking in the restaurant?

A. Yes, sir.

Q. All in the restaurant when you saw them?

A. Yes, sir, as near as I can remember.

Q. When did you see them again?

A. On the Milwaukee right of way.

Q. How long afterward?

A. Oh, I should judge it was an hour and a half altogether from the time I first seen them until they was on the Milwaukee railroad.

Q. You saw them on the right of way when you picked them up?

A. Yes, sir.

Q. And you didn't see them any time excepting at the restaurant, you didn't see them at any other time or other place, excepting on the right of way, when you picked them up, is that correct?

A. Yes.

Q. You say in the restaurant you didn't see anybody take a drink that you could swear to, did you?

A. Not while I was eating, no, sir.

Q. While they were in the restaurant or you were in the restaurant you didn't see anybody take a drink that you could swear to, that was in this crowd?

A. Not that I remember, in the restaurant part.

Q. So any drinks you saw anybody take would be after you picked them up on the right of way, is that right?

A. Not necessarily.

Q. Answer my question. Is it true or isn't it?

THE COURT: Did you see them take any drinks other than those which they took after you picked them up?

A. Yes, sir.

MR. CORKERY: Q. Where was that?

A. That was on the way down to the right of way.

Q. Just before you picked them up?

A. They just went out of the door of the restaurant.

Q. That is what I understand you to say, that you saw them at the restaurant, and you didn't see them again until an hour and a half, until you picked them up on the right of way, isn't that true?

A. That is the case.

Q. During that hour and a half of time you didn't see them, did you?

A. The hour and a half, I believe, comprises from the time I first seen them until I see them on the right of way.

Q. You left them at the restaurant, and saw them again on the right of way when you picked them up?

A. No, sir. The hour and a half comprises the time I was around eating in the restaurant and resting. That takes in when I see them in there too.

Q. How much time elapsed from the time you left them at the restaurant until you picked them up on the right of way?

A. That all includes this hour and a half or two hours.

Q. But I want to know about how much time from the time you left them at the restaurant and didn't see them any more until you picked them up on the right of way.

A. I should judge half an hour.

Q. And during that time you didn't see them?

A. No, sir.

Q. You didn't see them take any drinks in the restaurant?

THE COURT: You mean in the restaurant, or before he left the restaurant?

MR. CORKERY: Any place about the restaurant.

A. I seen them take no drinks in the restaurant.

Q. So the first drinks you saw them take was when you picked them up on the right of way, isn't that true?

A. The whole bunch, yes, sir.

Q. You say Chamberlain may have taken two drinks, but that is about all?

A. No, sir. I said that I didn't know how many

he had taken. I said it was passed several times, and I didn't notice him refuse any.

Q. I thought you said on direct examination that you saw him take several, you couldn't say how many, isn't that right?

A. I don't believe I said that.

Q. All these drinks you saw him take was after you had picked them up, wasn't it?

A. No, sir. They was drinking coming down the right of way. I believe I stated that before.

Q. That is, when you picked them up, about that time, isn't it?

A. Yes.

Q. And you had already got your speeder then and was making arrangements to pull out?

A. And then went down and backed the car out and started out.

Q. Now then, sir, how much did these men pay you for hauling them?

A. They did not pay me anything.

MR. KORTE: That is immaterial.

MR. CORKERY: Q. Did they pay your partner anything?

MR. KORTE: He has answered the question no. He is bound by it, Your Honor.

MR. CORKERY: He said they didn't pay him.

WITNESS: I received no money.

Q. You had a partner, didn't you?

A. My boss, Mr. Ernster. I don't know whether he received any or not.

Q. He was with you at this time?

A. Yes, sir.

Q. What was his name?

A. Mr. Ernster.

Q. If he had received any money for carrying these men you would have known it?

THE COURT: What is the purpose of going into this?

MR. CORKERY: We want to show that these men made a practice of carrying passengers for hire, and it was not a proposition of picking up a drunk; it was simply a commercial proposition of carrying men for money. The attempt to show here the reason they were so kind was that they thought they were drunk, and as a matter of safety for the company, so that they wouldn't get hurt, that they would carry them. I want to show that that is not the fact.

MR. KORTE: It wouldn't be binding on the company, Your Honor.

THE COURT: No. It is going to the credibility of the testimony. I think i will let him answer, if that is your purpose.

MR. KORTE: Isn't it an irrelevant issue, Your Honor? Is it cross examination?

THE COURT: No, I don't think so, if it is to be brought out for the purpose suggested. He stated thtat this witness said he picked these men up as a matter of safety, because they were partly drunk. Counsel says he will show that it wasn't for that purpose at all, but that it was for the money.

(Question read.)

MR. KORTE: Of course that is argumentative.

THE COURT: Yes, that particular question. The objection is sustained.

MR. CORKERY: Q. Didn't you, as a matter of fact, receive fifty cents apiece from each man carried on that car, either you or your partner?

MR. KORTE: It is incompetent.

A. I did not receive fifty cents.

Q. Didn't Mr. Ernster receive fifty cents from each man, either you or he in your presence?

A. Not that I know of.

Q. Can't you say yes or no, whether you did or he did?

THE COURT: Did you receive any money at all from these men?

A. No, I didn't receive any.

MR. CORKERY: Q. Did Mr. Stiles, in your presence?

A. Not that I know of.

Q. Now you say you picked up these men about a quarter of a mile from the station at Marble Creek?

A. No, sir,—a quarter of a mile was the distance between the station and Pokono siding.

Q. And you picked them up at Pokono station?

A. No, sir.

Q. Where did you pick them up?

A. About a hundred and fifty yards west of the station at Marble Creek.

Q. That would be about a quarter of a mile, wouldn't it?

THE COURT: A hundred and fifty yards.

MR. CORKERY: It would be a good deal less than a quarter of a mile, wouldn't it, that is, where you picked them up? You took them on down to what place?

A. Herrick, Idaho.

Q. You say you stopped several times and unloaded them and took them on again?

A. The first stopping point was just around the curve a short distance from the west end of the Pokono siding.

Q. And you stopped there and let them off, and went on about some other business?

A. We stopped there for a matter of three or four minutes, and then went on around the curve to a set-off and stopped again.

Q. Did you at any time set the men off or let them get off and go about other work?

A. We set off for a train there.

Q. I am asking if you made another trip down to make some repairs and come on back and got them?

A. No, sir.

Q. So that they were with all the time?

A. On the trip down.

Q. So that on the trip of these men from Marble Creek to Herrick they were with you all the time?

A. We left them for I should judge five minutes.

Q. What did you do during those five minutes?

A. Went back and picked up a man by the name of Black Joe.

Q. Now, Mr. Chamberlain sat there on the speeder, you say, he sat on what part?

A. Right over the tool box and the tray.

Q. He sat there, did he, on the tool box?

A. On the back end of the tray, yes, sir.

Q. Sat there all the time?

A. No, sir.

Q. Well, he sat there all the time you were running the speeder?

A. Part of the trip he did, until we set off for the train; then he changed his position.

Q. Now you couldn't say, Mr. Witness, that Mr. Chamberlain was intoxicated there, could you?

A. To quite an extent, yes, sir.

Q. You wouldn't say that he was drunk, would you, here before this jury?

A. Yes, sir.

Q. Well, you say he was intoxicated to quite an extent? What do you mean by that?

A. Why, from his manner of speech and the way he walked.

Q. You observed all that when he got off of the platform at Herrick?

A. Yes, sir.

Q. You didn't pay any attention to him after he got off the platform at Herrick? He got off himself, didn't he?

A. No, sir. I don't remember exactly there, but as far as paying attention to him, it was only to see that he went over and sat down on these trunks or boxes.

Q. I say, he got off himself?

A. I don't know. One of the men on the car I think lifted his leg over the running gear there.

Q. You left him on the station platform?

A. Yes, sir.

Q. Alongside of a hole, unguarded?

MR. KORTE: That is not cross examination, Your Honor.

MR. CORKERY: They make the claim, if Your Honor please, that they were looking after this man as a matter of safety, to protect him. Now it is inconsistent that they would leave him in this unguarded place.

THE COURT: I don't think they make the claim that they were looking after the man to protect him.

MR. KORTE: No, that wasn't my claim, or anything of the kind. That they picked him up off the track as a matter of humanity, to get him away from there.

THE COURT: I don't think he stated that they were trying to get him off of the right of way.

MR. CORKERY: Q. Well, if you left this man on the platform, alongside of this unguarded hole, he wouldn't be in any safer place than where you picked him up, would he?

MR. KORTE: I object.

THE COURT: Sustained.

MR. CORKERY: An exception.

Q. Chamberlain, of course, went along up to Black Joe's place, didn't he?

A. No, sir.

Q. He didn't go up there?

A. He did not go down to Black Joe's place. Black Joe's place is down below.

Q. Where was he when you went down there?

A. Chamberlain and Wallace La Branch were together at this set-off point.

Q. Why did you leave the company's employ?

A. Why did I?

Q. Yes.

A. To join my father in business.

Q. You weren't discharged on account of accepting fare there, were you?

A. No, sir. I have credentials in my pocket. I could go back any time.

MR. CORKERY: That is all.

RE-DIRECT EXAMINATION by

MR. KORTE:

Q. What hour was it that you arrived at Herick and unloaded them there, if you recall it?

A. If I remember right, it must have been around 4:30 or 4:45, because we looked at our watches then and concluded that if we went at a good gait we could beat 17 in to headquarters.

Q. When you got them loaded on to the speeder how fast did you operate the speeder, from the time you loaded them on until you unloaded them at Herick

A. I should judge about five miles an hour.

MR. KORTE: That is all.

MR. CORKERY: That is all.

CHARLES F. ERNSTER, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. KORTE:

Q. State your name.

A. Charles F. Ernster.

Q. How old a man are you?

A. Twenty-three.

Q. Are you married or single?

A. Married.

Q. Where do you live?

A. Rockdale, Washington.

Q. At the present time?

A. Yes.

Q. At one time did you live at Marble Creek, Idaho?

A. Yes, temporarily.

Q. What period of time was it that you lived at Marble Creek, and when did you live there?

A. I don't remember the exact date I went there. I have got it marked down in a little diary, but I haven't got that with me.

Q. Give us your best recollection?

A. I was there two weeks, and when this trip happened I was there about one week, I guess.

Q. You were signal maintainer, were you not?

A. Yes, sir.

Q. The same as Mr. Hodges?

A. Mr. Hodges was helping me.

Q. You are working for the railroad at the present time?

A. Yes, sir.

Q. And have been ever since this accident?

A. Yes, sir.

Q. You remember the incident when Mr. Chamberlain was injured?

A. Yes, sir.

Q. Did you see him around Marble Creek that day?

A. Yes.

Q. What time of day was it when you first saw him?

A. It must have been somewhere around noon.

Q. Did you see him off and on from that time on in the afternoon?

A. I seen him about three times, I think.

Q. Who was he with?

A. He was with a few of them around there. He was up in the store when I see him once, and this man, Mr. Hodges,—this man Mr. Hodges referred to as Andy and Charlie—I forget his name now.

Q. McDowell?

A. McDowell.

Q. Did you know the La Branch boys?

A. I didn't know them only by sight. I didn't know their name at that time, but I learned afterwards that one of these boys was La Branch.

Q. Did you see such a man there with him at that time?

A. Yes, sir.

Q. Who else did you see him associated with at Marble Creek?

A. I couldn't say exactly. I know there were men around there.

Q. There were other men, were there, around there?

A. Yes, sir.

Q. Where you saw him around those other men at Marble Creek from 11 o'clock on, tell the jury whether or not you saw Chamberlain drinking whiskey and the other men drinking whiskey with him.

A. Yes, sir.

Q. Tell in your own way what you saw, so that we can get an idea of it, too, what it is to drink whiskey.

A. I seen Chamberlain take a drink as he passed my car on their way walking down the track west, he and this Andy, and Charlie McDowell was along, too, and Mickey, and Mr. Chamberlain were all together.

Q. And after that did you notice Chamberlain anywhere else? Did you see him after that anywhere else, after you saw him go past where you were?

A. No, I didn't see him until later on. We must have left there shortly after that.

Q. And where did you come upon them?

A. Just a short ways west of Marble Creek.

Q. Now tell the jury just how you came upon them there.

A. Well, they were all walking down the track, and they were all staggering, and they flagged us down and wanted to know if we would carry them down to Herrick, and I thought it best to do so on account of their drunken condition.

MR. CORKERY: We object to this.

THE COURT: Overruled.

MR. KORTE: Go ahead and tell in your own way.

A. On account of their drunken condition I thought it would be best to take them down there, that I was doing the right thing, because it is awful crooked track, and trains come down that hill awful quiet, and if they weren't on the alert they would probably get run over.

Q. What did you do then by way of giving them a ride down, and how did you load them on?

A. We told them where to get on, and they got on where we told them, except this La Branch boy, and he seemed to be the most intoxicated one of the bunch, so he laid in the tray.

Q. Where is that tray?

A. Say this is the top of the car, and here is the tray that I am sitting in, for instance, and he backed up this way, and leaned up against the legs of the other men, and had his feet sticking out over the top of the tray, so there was no possible chance for him to fall off.

Q. After you moved on, what, if any, drinking did Chamberlain do or any of the other men?

A. When we stopped to set off this fast freight train, after we seen Black Joe, we thought then to get down over the bank out of the way of the train, and they took several drinks then, several.

Q. Did you see Chamberlain drink?

A. Yes, sir.

Q. Go ahead.

A. And Chamberlain and Black Joe were behind a little hill there arguing.

Q. What were they saying?

A. That was afterwards that the argument came on. I am getting ahead of my tale here.

Q. Go ahead and tell just the circumstances there in connection with what you did and what they did.

A. After we had set off there we went back up and got Black Joe and hauled him down to the house,

and a couple of the boys took him over to the house, but he had made a cross-cut, with his gun.

Q. What was he trying to do with it?

A. He seemed to be gunning for somebody; as near as I could make out, it was Bart Chamberlain.

MR. CORKERY: We object to that. That is wholly voluntary.

THE COURT: You may state what he said and what he did, but not your conclusions.

MR. KORTE: Q. State what Black Joe said to Chamberlain and what Chamberlain said to him, whether they said anything or not, when he came up there with a gun.

A. Well, this Andy and Chamberlain went down the track to talk it over with him, and he was cursing and swearing at them, and Andy grabbed the gun, and he pulled the gun down, and was going to shoot, it looked like to me.

Q. Shoot who?

A. To shoot either Chamberlain or Andy, I don't know which; I couldn't see; so then was when the argument——

THE COURT: You say Andy caught hold of the gun?

A. Yes, sir, and fired four or five shots out of it, and then they commenced to argue among themselves.

MR. KORTE: Q. Tell what they said to each other, with reference to the kind of language they were using.

A. They were swearing and cursing at one

another, and Black Joe said he was going to kill him if he could get his gun back, but I had the gun then. I got down there as soon as I seen it was safe, and I had the gun myself.

Q. Did you quiet down the fracas?

A. The fracas quieted down.

MR. CORKERY: We object to that.

MR. KORTE: Q. What did you do after that?

A. We went on down——

THE COURT: Did you take them back on the car then?

A. Yes, sir; we loaded them all on there, including Black Joe.

MR. KORTE: Q. Where did you go then?

A. We proceeded to go on down to Herrick, and we left some of them there just at the curve east of Herrick.

Q. What did you do with the gun when you went on?

A. We left it up there in the bushes. I picked it up on the way back. We left some of them and took La Branch and this Mickey,—I don't know whether we took another man or not,—but anyhow we took them on down to Herrick, and then went back after the other bunch.

Q. Who was in this last bunch?

A. That is what I don't know; I don't know which half we took first.

Q. Was Chamberlain in either one of the bunches?

A. Yes.

Q. All right.

A. We did not unload them on that board walk. It was this side of that; it was east of that and west.

Q. Where did you unload Chamberlain?

A. We unloaded him on a kind of a little gravel fill there, very close to this board walk, but not right there on the walk; they would fall over, all they would do would be to roll down the bank in the clay.

Q. Describe his walk when you unloaded him.

A. It was very unsteady, just the same as any man under the influence of liquor would walk, if he had that much.

Q. Where did you go then, and what did you do?

A. We went on down a ways to the telephone booth, that is at—well, it is opposite the section foreman's house at Herrick; that is below the station I should judge about half a mile; and we figured then that we could get back up to Herrick ahead of No. 17, so we went on back.

MR. KORTE: You may take the witness.

CROSS EXAMINATION by

MR. CORKERY:

Q. You say you did make one trip down to Herrick with part of them and left the other part back there?

A. Yes, sir.

Q. And all the drinks that you ever saw Mr. Chamberlain take was one?

A. No, sir, I did not say. I seen him take enough to make any man pickled.

Q. Was you pickled?

A. I certainly was not.

Q. You didn't take any drinks?

A. No, sir.

Q. Not a one?

A. No, sir.

Q. Did your partner take any?

A. No, sir.

Q. Isn't it a fact that Mr. La Branch gave you from a dollar and a quarter to a dollar and a half for the passage of those men?

A. No, sir, not a cent.

Q. Didn't you make a practice of accepting money for the transfer of those men?

MR. KORTE: I object.

THE COURT: Just a moment, gentlemen.

MR. KORT: I object to that as immaterial and irrelevant, so long as it isn't confined to these particular ones, Your Honor.

THE COURT: Overruled. You will be bound by his answer though.

MR. CORKERY. Answer the question.

A. What is the question?

MR. CORKERY: We will withdraw the question, if Your Honor please.

Q. You say you unloaded him, or rather he got off at a place some distance ahead of the platform?

A. Yes, sir, right next to the platform, but not on the platform.

Q. And there was a path leading away there that he followed?

A. There was no path there. Of course there is a lot of trails around there, I think, but it is all down hill, steep embankment there.

Q. And he went on down the embankment, down the trail?

A. I don't know where he went. I was very glad to get away from him.

Q. Well, if this man was drunk, you certainly watched the way he went, didn't you?

A. What was it to me? He wanted to go to Herrick, and I figured he would be safe there because the people around him would take care of him.

Q. Answer the question, as to whether you watched in which direction he went.

THE COURT: No. Your question is put in an argumentative form, and the answer is simply responsive to it.

MR. CORKERY: Q. Did you watch in which direction he went?

A. No, I did not.

Q. So you can't say now whether he went on the platform or went home?

A. No, sir.

MR. CORKERY: That is all.

MR. KORTE: That is all, Mr. Ernster.

MRS. MARG. MARSTON, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. KORTE:

Q. State your full name to the jury.

A. Mrs. Marg. Marston.

Q. Where do you live?

A. Herrick, Idaho.

Q. How long have you lived there?

A. Three years.

Q. What is your business there, Mrs. Marston?

A. Cedar pole and post business, and also a hotel.

Q. You ran the little hotel there?

A. Yes, sir.

Q. Will you tell the jury how many buildings there were at Herrick, and what there is where you live?

A. There is my hotel, and Mr. and Mrs. La Branch's house; there is also a little house that belongs to Joe Doherty; and there is also a little tent that belongs to Mr. and Mrs. La Branch, and there was also an old saloon building. There is the old postoffice that used to be the old postoffice, and there is an old warehouse that the Milwaukee used to use. That is all.

Q. Do you remember when the station building was taken away from there?

A. I don't remember the date, no.

Q. But you recall that it was taken away?

A. Yes, sir.

Q. Was that before or after, if you know, the time when Mr. Chamberlain was injured?

A. It was taken away before.

Q. And after the station was taken from there, how did you travel with reference to the railway trains?

A. You mean how did—

Q. How would you get on the trains there when you wished to travel out of the little station?

A. Well, for a while after the station was taken away, it stopped, but for some time now and at the present time you have to flag it before you can get on.

Q. But it is what is called a flag station?

A. A flag station.

Q. You have known Bart Chamberlain, have you not, during the time you have lived there?

A. Yes, sir.

Q. Where did he live, Mrs. Marston, with reference to the station and the little town of Herrick?

A. He lives across the river, but I couldn't tell just where he does live, because I have never seen his house only just from my place, but he lives across the river, up kind of on the hill.

Q. I wondered whether or not you would be able to read this blue print that I want to identify as the station of Herrick, on the defendant's line. Are you able to note on there what there is in reference to the railway right of way and the river and your buildings?

A. There, that is Herrick.

Q. Are you able to tell from this map where the railroad is, and where the river is, and where your building is located?

A. Yes; here runs the river, and here the railroad; and there is where my house stands.

Q. Tell from Defendant's Exhibit No. 2 where your hotel was located with reference to the depot or the platform. Can you tell it on there, or mark it on there?

A. You mean what direction?

Q. Yes,—it is south or north?

A. My house stands south.

Q. Of what?

A. From the platform, at this time, directly south.

Q. Had you seen him around the station of Herick at various times, Mr. Chamberlain?

A. Yes.

Q. Prior to the time he was hurt?

A. I didn't see him that day.

Q. Before that had you frequently seen him about the station grounds?

A. Yes, sir, he is there most every day.

Q. Now do you recall the day when he was hurt?

A. Yes, sir.

Q. Do you recall when, as Mr. McDowell said, he was brought to your hotel?

A. Yes, sir.

Q. Do you recall that incident?

A. Yes, sir.

Q. Do you remember prior to the time and when it was daylight of seeing Bart Chamberlain walking along the track or near the depot?

A. You mean when they brought—

Q. The depot platform.

A. When they brought them down?

Q. Yes. Do you recall when the motor car brought the men down from Marble Creek?

A. Yes, I saw them bring Bart Chamberlain down on the motor car.

Q. Did you see Chamberlain when he got off?

A. Yes.

Q. In what direction was he going?

A. He was going west.

Q. Tell the jury now just how his walk was. Describe his walking, with reference to whether it was steady or unsteady.

A. Well, from where I lived, it wasn't very steady.

Q. You, in your lifetime, I presume, Mrs. Marston, have seen men under the influence of intoxicating liquors?

A. Yes, sir, quite a number of them.

Q. From your observation of him and seeing him as you did when he got off of the speeder and walked west, was he or was he not intoxicated?

A. Well, I wouldn't call him a sober man.

Q. Did you see him subsequently to the time that he walked west?

A. I never saw him—I saw him when they took him off the speeder, or when he got off the speeder, and then I noticed him walking down the track west from where they unloaded him.

Q. And after that you didn't see him until they brought him to the hotel?

A. I didn't pay any attention to him.

Q. Do you remember, some time after he came out of the hospital, of having a talk with him about his injury and his condition?

A. Yes, sir.

Q. Tell the jury when that was and what he said to you and what you told him, just tell it in your own way, how it occurred.

A. His partner, Jim Peters, came to my house and asked me if he could wait at my house for the train. The train was late that day, and he was going to the hospital. And I said, "Bart, how do you feel? Did you get hurt much?"

MR. CORKERY: What day was this?

MR. KORTE: This was some time after he came out of the hospital.

Q. Just tell the conversation.

A. I asked him, I said, "Bart, were you hurt much? How do you feel?" And he said, "Oh, well, that is what booze does," and we never said anything more about it. He waited there until time for the train, and then he went on down and took the train.

Q. Can you recall about the time when you had this talk?

A. No, I couldn't tell the date of it.

MR. KORTE: I think that is all.

WITNESS: It was a short time after he came out of the hospital the first time.

MR. KORTE: That is all.

CROSS EXAMINATION by

MR. CORKERY:

Q. You say he was walking west?

A. Yes, sir.

Q. And you were in your house, were you?

A. Yes, sir, I was in my house.

Q. About how far is that from the depot?

A. About four hundred and fifty feet.

Q. You were quite a ways away then?

A. Four hundred and fifty feet, just about; I

never measured it, but I imagine about four hundred and fifty feet.

Q. Inside of the house?

A. I was standing at the south window, dining room window.

Q. There has been considerable feeling and trouble between you and Mr. Chamberlain?

A. There is not.

Q. You had some trouble over a hay deal there?

A. We did. We didn't have any trouble over it, but he sold us some hay.

Q. You didn't speak for a long while after you had that transaction, did you?

A. Whenever I met him I spoke to him.

Q. When you had this transaction, you and the other gentleman interested with you, didn't speak, after this deal?

A. Whenever I meet Mr. Bart Chamberlain I always speak to him.

Q. Will you answer the question as to whether or not, after you had this deal, for any length of time, you and your husband didn't speak to him.

A. Yes, sir, we spoke to him when we saw him.

Q. You had trouble over the hay, didn't you?

A. No trouble, no.

Q. You didn't have any ill feeling over that?

A. No, sir.

Q. What was done about this hay deal that you had?

A. Bart Chamberlain sold the hay to Mr. Mars-ton and I, and we was to pay him the money at times

until the hay was brought over across the river, and we tried to get a baler, and we couldn't get the baler to bale the hay, and so we left it there, and we couldn't get it across the river, and in the meantime there was a gentleman by the name of Dick Talbot brought in a bunch of horses, and Bart Chamberlain came over and asked Mr. Marston if he would turn the hay over to him, and this Dick Talbot was to pay him so much a month to look after the horses, and they did so, and they turned the hay over to Dick Talbot, and Dick Talbot went and turned, turned the money over to Olson & Company, which I owed them \$55, and Bart Chamberlain nine dollars and something, I think,—I am not sure—I believe it was nine something.

Q. That was what the difficulty was about?

A. That was all the difficulty was about.

Q. Have you just been married recently?

A. Yes, sir.

Q. And the gentleman you are married to was in business with you up there prior—

A. Yes, sir.

Q. Living at this hotel?

A. Living at my hotel.

Q. And you and he made a statement, didn't you, that you was going to fix Mr. Chamberlain?

A. No, sir, we did not.

Q. I will ask you if since this trial, and while you have been waiting, you haven't been closely watched by the gentleman sitting here, a claim agent for the company?

A. No, sir.

MR. KORTE: That is not cross examination, Your Honor, and such insinuation I don't think should be permitted.

THE COURT: No. I shall have to reprimand you, Mr. Corkery, for making a suggestion of that kind. It is wholly improper.

MR. CORKERY: We would like to show the fact. We can show the constant association of the party interested for the defendant and this witness here.

THE COURT: You may ask whether she is associated with him.

MR. CORKERY: Q. Isn't it a fact that you were constantly associated with the claim agent of the company during the past several days, waiting for the trial?

A. We have come over on the car together, gone over on the car together and come back together.

Q. Gone to Spokane together?

A. Yes, sir, we went into Spokane together.

MR. CORKERY: That is all.

RE-DIRECT EXAMINATION by

MR. KORTE:

Q. You have associated with me, too, haven't you, Mrs. Marston?

A. Yes, sir.

MR. KORTE: That is all. Call Edwin Greenwood.

EDWIN B. GREENWOOD, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. KORTE:

Q. State your full name to the jury.

A. Edwin B. Greenwood.

Q. How old a boy are you?

A. Fifteen.

Q. Where were you born?

A. In Michigan.

Q. Where were you living when you came west first?

A. I don't know what you mean by that? When we come here?

Q. Yes.

A. We was living in Saskatchewan when we come here.

Q. And how long did you live in Saskatchewan?

A. One year.

Q. What was your father doing there?

A. Farming.

Q. Are there mines around that territory?

A. No, sir.

Q. Did you at one time live in a mining country?

A. Yes, sir.

Q. Where was that?

A. Tabor, Alberta.

Q. What was your father doing there?

Q. And you lived there among the miners, did contracting.

Q. And you lived there among the mines, did you?

A. Yes, sir.

Q. And during the time you lived there, Edwin, had you ever seen a man drunk?

A. Yes, sir, I have seen plenty of them every Saturday night.

Q. When did you come down to the Marble Creek country, Edwin?

A. Last year.

Q. What is your father doing there?

A. He is making posts for Joe Marston.

Q. That is the husband of Mrs. Marston?

A. Yes.

Q. Where do you live?

A. We live at Herrick, Idaho.

Q. Right near where Mrs. Marston lives?

A. Yes.

Q. Do you know the La Branch boys?

A. I know them apart now; I didn't last year.

Q. Did you know Bart Chamberlain? ?

A. Yes, sir.

Q. How long have you known him?

A. About a year.

Q. Where did he live with reference to the little station of Herrick, where you live?

A. Straight across the river about half a mile.

Q. How did he get back and forth across the river?

A. In a boat.

Q. How would he operate the boat?

A. You have to take a pike pole.

Q. That is, take a pike pole and pole your boat across the river?

A. Yes.

Q. On account of what,—swift water?

A. Swift water.

Q. Have you seen him poling back and forth since he was hurt?

A. Not from that place, but I have seen him pole the swifter rapids below that place.

Q. Swifter rapids?

A. Yes, sir, directly across from the bridge.

Q. When you speak of the rapids tell the jury what it was.

A. Swift water, running over the rocks.

Q. Do you remember the day when he was hurt?

A. Yes, sir.

Q. When did you first see him on the platform, if you saw him at all, Edwin?

A. I was up with my lantern, when I see him on the platform, and it was quite dark.

Q. How did you come to go down to the platform that evening?

A. The La Branchs had my lantern, and they had been around there, presumably at least.

MR. CORKERY: We object to that and move to strike it out.

THE COURT: Yes.

A. And my mother said, "You had better go down and get that lantern. Them boys is drinking—"

Q. You needn't state what your mother said.

THE COURT: Your mother said to go down and get the lantern?

A. Yes, sir.

MR. KORTE: Q. And you went down to the platform?

A. Yes, sir.

Q. Was it dark when you went down there?

A. Yes, sir.

Q. Where did you see Bart Chamberlain first?

A. I didn't see him at first. I went to the further end of the platform, and there was a considerable time I was there before the train come.

Q. When did you first notice him, and where was he?

A. He was sitting on the trunk when I first noticed him, having words with Frank La Branch.

Q. How near did you go to him then when you heard these words?

A. I didn't come very much nearer. I was thirty feet from him.

Q. Go ahead and tell what happened there when you came up to where he and La Branch were having the words.

A. I come up to within maybe ten feet of him, and the train was coming about half way between the tunnel—

Q. How far is the tunnel from the platform?

A. It is about, I should say, three-quarters of a mile, a little over three-quarters of a mile. The train was coming near, and I expected my father from Marble Creek on the train, and so I picked up and come down, and I was about ten feet maybe from the trunk, and I turned around, but the headlight

had not yet struck the trunk, and I seen Mr. Chamberlain get up, and I would say that he was under the influence of liquor.

Q. How did he act? Just tell the jury, when he got up, just describe how he got up.

A. He was sitting on the trunk, with his back east, facing west.

Q. Which way would that be with reference to where he fell off?

A. It was like if he was sitting on the trunk here, with his back to the headlight, he went cater-cornered and fell off.

Q. How did he act when he got up, with reference to movement?

A. Well, he seemed to be, well, just shaking a little, trembling, like, and he moved sort of side ways, and I seen Mr. Frank La Branch put out his hand. I don't know whether—it was too dark for me to say whether he touched him or hit him, or didn't touch him at all,—and I seen Mr. Chamberlain raise his hands, and then he fell over.

Q. What did you do?

A. I just stopped and looked, and Frank went around with the lantern and he went down there, and then Mrs. La Branch, and he hollered for Mrs. La Branch, and she took the lantern, and I followed.

Q. What did she say?

A. I was scared half to death. I thought Mr. Chamberlain was dead; his face was dirt and grime on it.

Q. What remark did Mrs. La Branch make, if any at all?

A. She said, "He is dead," and Mr. La Branch looked at him, and he said he wasn't dead, and the train was then coming around the curve, and the headlight was on the platform, and he told her, "You had better get back up and get the kids, and I will watch him."

THE COURT: Who said that?

A. Mr. La Branch.

MR. KORTE: Q. What did you do then?

A. I didn't do anything. I was scared to death.

Q. Do you remember, after Bart came out of the hospital, and some time about when this suit was brought, if you know it, an instance of having a talk with him about this case?

A. Yes.

Q. Tell the jury about how you come to have the talk with him, and what he said to you.

A. I was up on the platform one morning to buy a paper, and I don't remember just what time it was; I don't remember whether it was spring or winter, but Mr. Chamberlain was standing on the platform there with me, and I asked him how bad he was hurt, and whether there was any pain or not, and he said, yes, he was, and I told him I had seen, the night before I had seen about the court in the papers, that he had sued the company, in the papers, and that he was suing the company, like that. "Yes," he says, "suing the company, and they are likely to call you as a wit-

ness, and he says, "If you will keep quiet," he says, "I will give you a piece of money out of it."

MR. KORTE: You may take the witness.

CROSS EXAMINATION by

MR. CORKERY:

Q. How many persons have you talked with about this case, other than your own folks,—how many strangers?

A. I don't know.

Q. Sir?

A. I haven't talked with any, not to amount to anything.

Q. Well, whether they amount to anything or not, just tell us the names of those you have talked to.

A. Mrs. Marston for one.

Q. Did you talk over with reference to what your testimony would be in this case?

A. Mrs. Marston was there when I gave my testimony to the company shortly after it happened.

Q. Whereabouts was it that you gave your testimony to the company?

A. Right at Mrs. Marston's house.

Q. Who was present then?

A. Mrs. Marston.

Q. Who else?

A. That is all I can remember.

Q. What do you mean by giving your testimony to the company? Do you mean some representative of the company?

A. Just what I—

THE COURT: Who represented the company?

A. Mr. McKay, the claim agent.

Q. This gentleman here?

A. Yes.

Q. For a short time after the accident occurred, in talking with people, you gave the same answer to them all, namely, that he was pushed off by this other gentleman?

A. I did not. I said I didn't know whether he was pushed off or not.

Q. And you don't know now whether he was pushed off or fell off?

A. I do not. It was too dark.

Q. How far away were you from Mr. Chamberlain at first? When was it you were thirty feet away?

A. First I was at the end of the platform, presumably maybe about thirty feet away. When the train began to come near, I drew back towards Mr. Chamberlain sitting on the trunk.

Q. So that before the train came in, and when things were fairly quiet, so far as any noise or anything like that from the train was concerned, then you were thirty feet away from Mr. Chamberlain?

A. Yes.

Q. And the night was dark there?

A. Yes, sir, dark except for the lantern sitting on the trunk.

Q. When the train came in, and during the time the train was heading in there, and the light was on, and the noise of the train, were you any nearer than ten feet or about ten feet?

A. Well, I should say I was under ten feet.

Q. You want to change your testimony now, do you, and say you were under ten feet?

A. I would say that I was ten feet or under.

Q. In your talk there, in giving your testimony to the company, as you have stated, to the claim agent, in the present of Mrs. Marston, did you talk over that feature too, as to whether it was ten feet or under ten feet?

A. No, sir.

Q. That wasn't brought up?

A. No, sir.

Q. Did they ask you how near you were?

A. Yes, sir.

Q. What did you say?

A. I told them I was about ten feet.

Q. So you couldn't tell just what the condition of the man's hands was, whether he was shaking hands or what he was doing?

A. No. If he was shaking hands Mr. Chamberlain didn't put up his hands to shake with him.

Q. Well, you couldn't see it at that distance?

A. Yes. Mr. Chamberlain's hands was in the light.

Q. That was when he fell over backwards?

A. Yes, sir.

Q. So that the time his hands was in the air was when he fell off the platform?

A. Yes.

Q. You wouldn't state positively whether he shook hands with him before that or not?

A. He might have shook hands before that, because I didn't notice him when I first come on the platform.

MR. CORKERY: That is all.

RE-DIRECT EXAMINATION by

MR. KORTE:

Q. When you noticed Bart there on the trunk were you able to tell whether he was drunk or not, according to the way you have seen these fellows up in Alberta?

A. No, sir. He wasn't moving.

MR. KORTE: That is all.

RE-CROSS EXAMINATION by

MR. CORKERY:

Q. Shortly after this accident occurred did you have a talk with Mr. Glover about that place?

A. I don't know.

Q. Would you say positively that you didn't?

A. No, I can't say positively that I didn't.

Q. I will refresh your recollection. Didn't you, after this accident a short time, a few days, have a talk with Mr. Glover, in which talk you stated—

THE COURT: Where?

MR. CORKERY: At that store building in Her-
rick,—have a talk with Mr. Glover, in which you said that at the time the accident occurred you were up near the house?

A. No, I didn't.

MR. AILSHIE: Who was present?

MR. CORKERY: He and Mr Glover were present. You didn't have any such talk as that at all?

A. No, sir.

Q. You are positive about that?

A. Yes, sir.

Q. Are you also positive that you didn't have any talk about the accident?

MR. KORTE: That is not an impeaching question, Your Honor.

MR. CORKERY: I may not have gotten the exact talk between you, so I will put it again.

Q. First I will ask you if you had any talk with Mr. Glover?

A. I can't say whether I had any talk with Mr. Glover or not.

Q. I will ask you if you had a talk with him in which you said that you were between the store and the station there at the time the accident happened?

A. No, sir; I know I didn't have no talk like that, because I was on the station platform.

Q. How would you be positive you didn't have any talk?

A. Because I wouldn't say anything like that, that wasn't true.

MR. CORKERY: That is all.

MR. KORTE: I would like to have the boy excused.

MR. CORKERY: We have no objection.

MR. KORTE: That is all, Edwin. You may go home.

HENRY H. McCARTHY, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. KORTE:

Q. Your full name?

A. Henry H. McCarthy.

Q. You are the local surgeon of the Chicago, Milwaukee & St. Paul, at Spokane?

A. Yes, sir.

Q. You examined the plaintiff, Bart Chamberlain, today at noon, did you?

A. Yes, sir.

Q. Tell the jury his physical condition on that examination, as you found him today.

A. Well, I made an examination of Mr. Chamberlain in the presence of Dr. Platt, at his room in the hotel here, and I stripped him and examined him, his general physical condition. His eyes, and his chest, and his heart, and lungs, and abdomen, and his nervous system, reflexes, his joints, all except the urinary examination; I didn't examine the kidneys, which Dr. Platt tells me are normal. For a man of his years he is remarkably well preserved. I could find no evidence of any present injury to him. Dr. Platt tells me he had a dislocation of his right shoulder. If he had, the present movements are normal. He can move his shoulder; he took off his shirt and lifted his arms up, his clothing, himself, and he did it unconsciously, before I drew his attention to the fact that he had complained of some trouble with his shoulder. There is no crepitation. There is no evidence of any present injury to it. If he did have a dislocation he is entirely recovered from it at this time.

Q. How did you find his lungs, Doctor?

A. In regard to his chest, his lungs, his expansion, or deep breathing, he has got good expansion, three and a half inches, for a man of his years, which is remarkable; and when he takes a long breath the extent to which the lung descends down is an inch and a half on each side. I marked it out with an indelible pencil on the the body, and they are both equal, on the right and left side. I understand he had pneumonia of the right lower lobe. If he had, he is completely recovered. There is no evidence of any adhesion and no crepitation, nothing at the present time that I can discover, and his heart is excellent, his arteries are good; they are as good as in a man of forty. His reflexes are good, and I see no reason why the man isn't in very good, perfect condition for a man of his age. He is much better than most men are at fifty.

MR. KORTE: Take the witness.

CROSS EXAMINATION by

MR. CORKERY:

Q. For a man of his age then you say he is in perfect condition?

A. For a man of his age he is excellent.

Q. There is no evidence, absolutely no evidence of this injury?

A. Not that I can discover.

Q. You heard Dr. Platt describe the adhesions there, did you, state that there were adhesions there now?

A. Well, I heard Dr. Platt say, but I tried to dem-

onstrate it with Dr. Platt today, and I can demonstrate it on him now if you will permit me to.

Q. You don't agree with Dr. Platt in his statement?

A. No, I don't.

Q. How long did you take in this examination?

A. About an hour.

Q. With this man down here?

A. Yes.

Q. What time did you get through that, Doctor?

A. I think we got through at twenty minutes to 1.

Q. With the patient?

A. Yes.

Q. How many times did you see him?

A. Just once.

Q. And you left his hotel at twenty minutes to 1?

A. Yes.

Q. And what time did you start in?

A. Started in just as soon as we got through here.

Q. And we left here a little after 12, did we?

A. Just about 12.

Q. During those few minutes was the only time you ever saw that man in your life?

A. Yes.

Q. And you never treated him?

A. No.

Q. And this judgment is derived from those few minutes you examined him?

A. Yes.

MR. CORKERY: That is all.

RE-DIRECT EXAMINATION by
MR. KORTE:

Q. Did you have sufficient time to make the examination?

A. Yes, sir.

Q. Would it require a longer time to make an examination so that you could tell whether there was anything wrong with the man or not?

A. No.

MR. KORTE: That is all.

MR. CORKERY: That is all.

MR. KORTE: Mr. Kirkpatrick?

WILLIAM KIRKPATRICK, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by
MR. KORTE:

Q. Give your full name to the jury.

A. William Kirkpatrick.

Q. You are the agent of the Milwaukee at Marble Creek, are you not?

A. Yes, sir, I am regular agent there.

Q. And you were the agent at that point on November 15, 1916, were you?

A. I was.

Q. Have you the record with you that you made at the time that No. 17, the passenger train going west, departed from your station?

A. I have.

Q. Will you produce it, please?

A. Yes, sir.

Q. When was the items that are on this piece of paper, Defendant's Exhibit 3, put down by you?

A. As regards to train 17, immediately after their departure, I would say within five minutes, usually within one minute.

Q. That is a daily record that you keep of the arrival and departure of trains?

A. All trains when I am on duty.

Q. I wish you would read from that record when No. 17 arrived and departed at that station.

MR. CORKERY: We object. We don't see that there is any issue—

MR. KORTE: Yes. They claim that 17 didn't get in there until 7 or 8 o'clock, and it got in a little after 5.

MR. CORKERY: There is no question that it was after dark.

MR. KORTE: But Bart Chamberlain claims that he went down and went across to his home.

THE COURT: Overruled.

A. I can show that No. 17 arrived at 5:04 and departed at 5:05.

Q. How far is the station of Herrick from Marble Creek?

A. According to time card distances, it is four and nine-tenths miles.

Q. In your experience as a station agent, about what time would No. 17 arrive at Herrick, under the schedule it was running?

A. About 5:18 to 5:20.

MR. KORTE: Defendant offers in evidence Ex-

hibit No. 2, being plat of survey of road and station at Herrick. And the defendant at this time will offer in evidence Exhibit No. 3, being the daily record showing the arrival and departure of trains at Marble Creek.

MR. CORKERY: We object to it as not showing any arrival of trains at the station where the accident occurred.

THE COURT: I think I will let it stand as it is. The witness has testified from this.

MR. KORTE: The presumption is that it arrived on schedule time.

Q. Mr. Kirkpatrick, did you make a measurement, for the benefit of this trial, of the length and width of the platform at Herrick?

A. I did.

Q. What is the length of it? If you have the figures with you, just read them off.

A. According to my measurements, the length is about 92 feet, four inches.

Q. And the width?

A. The width varies from ten feet five inches to ten feet eight inches.

Q. Did you measure the distances at various points from the top of the platform on the rear to the ground?

A. I did.

Q. Give those measurements.

A. At the extreme west end it is four feet three inches, the vertical measurement from the edge of the platform to the surface of the ground. Fifteen feet

east of the west end it is five feet nine inches. Thirty feet east of the west end it was eleven feet four inches. Forty-five feet east of the west end it was the same, eleven four. Sixty feet east of the west end it was eight feet eight inches. Seventy-five feet east of the west end it was seven feet nine inches. And at the extreme east end it was five feet eleven inches.

Q. You were agent at Herrick before going to Marble Creek, were you not?

A. I was.

Q. Up to the time that the building was taken away?

A. Yes, sir.

Q. And you know the physical conditions there on that account?

A. Yes, I do.

Q. When was the station removed, the station building removed?

A. It was moved from Herrick on October 5.

Q. And after that what if any station was maintained there by way of a regular station?

A. There was no station,—just the platform was all that was left.

Q. No agent there of any kind?

A. No agent, no representative of the company at that point at all.

MR. KORTE: That is all.

CROSS EXAMINATION by

MR. CORKERY:

Q. But they still continued to take on passengers and discharge passengers after they removed the depot?

A. Yes, sir.

Q. And sold tickets to that point?

A. We did, yes, sir.

Q. There is a sort of a slant to a deeper place away from the bottom of that platform, isn't there?

A. There is, yes, sir.

Q. How much deeper would that make the distance that you measured, to the exact bottom of the hole?

A. It would be, I should say, at a point four or five feet north of a vertical line from the edge of the platform to the earth, would be about two feet or two feet four inches lower than immediately beneath the edge of the platform.

Q. So that the point you measured it to be eleven and a half, or whatever it was, it would be thirteen and a half clear to the bottom?

A. It would vary from eleven feet eight to probably thirteen feet, within a distance of four or five feet from the edge.

Q. You don't know, of course, anything about the time that this train arrived at Herrick, Idaho?

A. I do not.

MR. CORKERY: That is all.

RE-DIRECT EXAMINATION by

MR. KORTE:

Q. Had you had any report of any delay anywhere?

A. I had not.

MR. CORKERY: We object to that.

THE COURT: Sustained.

Q. Do you know when it arrived at St. Joe?

A. No, sir.

Q. You have no record of it?

A. No.

MR. KORTE: We will have to get the train sheet on that. That is all. I would like to have the exhibits I offered in evidence identified.

The defendant rests.

MR. CORKERY: Mr. Chamberlain may take the stand.

BARTHOLOMEW CHAMBERLAIN, heretofore duly sworn in his own behalf, upon being recalled in rebuttal, testified as follows:

DIRECT EXAMINATION by

MR. CORKERY:

Q. Mr. Chamberlain, I will ask you if any money was paid to the boys on the speeder, or either of them, that testified here, on account of the passage of yourself or the other men from Marble Creek to Herrick?

MR. KORTE: That is objected to as not rebuttal. And they were bound by the statement of the witnesses when they said that nothing was given to them, and it raises a collateral issue, Your Honor, which we are not prepared to meet. It is on an immaterial issue.

THE COURT: No. I stated that they would be bound by the witness' statement merely as to the general custom, but as to what occurred at this particular time I think they may rebut that.

MR. KORTE: Your Honor, they have injected in here an issue on cross examination as to whether or

not there was money paid by the men, or by these men, to the men operating the speeder, for the purpose of impeaching those men. Now if that is so, you cannot impeach upon a collateral issue or an immaterial issue, either one. Isn't it one or the other? If you may impeach on it, why may I not then come in and show still on top of that that there was no money paid, by other witnesses. It was brought out on their cross examination.

THE COURT: This isn't for impeachment merely in the sense of contradicting the witness' statement. Suppose they hadn't asked the question at all of your witnesses, they might still introduce this testimony, for the purpose of tending to overthrow your theory that these men were picked up because they were drunk or intoxicated.

MR. KORTE: I don't see the materiality of it. They have attempted to prove that the man was sober. I have proved that he was drunk.

THE COURT: They weren't bound to prove that he was sober. There was some evidence introduced to that effect. I suppose because you had stated in your opening statement to the jury that you would show that. They anticipated that. They weren't bound to. Suppose they hadn't put on any testimony at all to that effect, and you had put on testimony to show that the plaintiff was intoxicated at the time, then they could put on the testimony that they have put on upon that subject, and also show anything else that would be germane to that issue.

MR. KORTE: Would it tend to show that the man

was intoxicated, whether he paid money or not? It neither contradicts anyone, nor does it impeach. It can't in any manner affect the issue. The reason I stated in my opening statement to the jury that we picked them up through a humanitarian reason the men had, rather than let them lay there and be killed, that was an immaterial side of why they picked them up. The fact that they paid them money wouldn't prove whether they were drunk.

THE COURT: It is a matter of argument, gentlemen. I think it is a circumstance upon which you may base an argument. The objection is overruled. (Question read.)

A. Yes, sir,—when we got on to the car—

THE COURT: You have answered the question.

MR. CORKERY: Q. Just answer whether any money was paid, and, if so, how much, and who to?

MR. KORTE: That is immaterial, Your Honor.

A. I paid him a half dollar myself, and I see Mr. Le Branch pass him money three or four different times before we got to where we met Black Joe.

Q. You heard Mrs. Marston testify that she had a talk with you after you came out of the hospital, in which you said to her that your accident was on account of booze,—did you hear her say that?

A. Yes.

Q. I will ask you whether you ever did have any such talk with her?

A. I say no, because I wasn't drunk, and this is made up.

Q. I will ask you if you had any talk with the boy

who testified here, this small boy twelve years old, or whatever his age is,—you heard him testify that he had a talk with you after you came out of the hospital, in which you told him that if he would keep quiet you would give him a piece of money,—did you have any such talk as that with him?

A. No. I never would have dreamed of such a thing.

Q. Did you ever have any trouble with Mrs. Marston on account of the hay—

MR. KORTE: That is not rebuttal, Your Honor. It is raising a collateral issue about trouble.

THE COURT: Sustained.

MR. CORKERY: Q. After this hay deal of which she testified, I will ask you whether or not you were on speaking terms with Mrs. Marston?

MR. KORTE: The same objection, Your Honor. They were bound by Mrs. Marston's statement as to whether or not she had any ill feeling against the man, and she said not, and they are bound by that statement. They are bound by the witness' statement, and can't raise that collateral issue.

MR. CORKERY: I have a right to go in and show the bias of a witness on cross examination.

THE COURT: I doubt whether this question reaches the point. I shall sustain the objection to this question.

MR. CORKERY: An exception. That is all.

CROSS EXAMINATION by

MR. KORTE:

Q. You knew, when you were giving those boys

money, that they had no right to take it, didn't you?

A. I didn't know they had no right to take it.

Q. You knew they weren't running a passenger train?

A. I didn't know it.

Q. You knew they were running a motor car?

A. I knew they were running a motor car.

Q. You knew you were doing wrong when you paid them fifty cents?

A. I didn't know I was doing wrong.

Q. You knew they had no right to collect fare on the speeder, didn't you?

A. I gave them fifty cents. That is more than they charge on the train, isn't it?

MR. KORTE: That is all.

MR. CORKERY: That is all. Mr. Boutellier.

ADOLPH BOUTELLIER, produced as a witness on behalf of plaintiff, in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. CORKERY:

Q. Your name is what?

A. Adolph Boutellier.

Q. And you reside where?

A. Worley, Idaho.

Q. What business are you engaged in?

A. Farming.

Q. What official position, if any, do you occupy at that place?

A. I am justice of the peace.

Q. Are you acquainted with Bart Chamberlain, the plaintiff here?

A. Yes, sir.

Q. How long have you been acquainted with him.

A. Since 1888 or 1889.

Q. And since that time, 1889, have you known him continuously?

A. Yes, sir.

Q. What would you say Mr. Chamberlain's reputation is in the community in which he resides for sobriety or the lack of sobriety?

MR. KORTE: That is objected to as immaterial and irrelevant, and not in rebuttal of any issue.

THE COURT: Sustained.

MR. CORKERY: That is all. I will call Mr. Glover.

JOHN H. GLOVER, produced as a witness in behalf of plaintiff, in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION by

MR. CORKERY:

Q. Your name is what?

A. John H. Glover.

Q. Where do you reside, Mr. Glover?

A. Marble Creek, Idaho.

Q. Are you acquainted with Mr. Chamberlain?

A. Yes, sir.

Q. Did you see Mr. Chamberlain about the day he got hurt, the fifteenth of November, last year? Did you see him on that day?

A. Yes, sir, I saw him in the afternoon.

Q. Whereabouts?

A. He came up to Marble Creek.

Q. What business were you engaged in there?

A. I was running the ferry there.

Q. From where to where?

A. From—across the river there.

Q. Running the ferry across the St. Joe River?

A. Yes, sir.

Q. Did Mr. Chamberlain see you upon that day?

A. Yes, sir.

Q. For what length of time?

A. Oh, a few minutes. I don't know just how long.

Q. What was his condition as to being sober or otherwise at that time?

A. Sober.

MR. KORTE: That is not rebuttal. I think they went into this condition on direct examination.

THE COURT: It is very unusual to take this course. You put on considerable evidence as to his condition in your direct testimony.

MR. CORKERY: Well, if Your Honor please, that is, of course, a matter of defense, contributory negligence, and his condition, and we didn't ask the plaintiff his condition until they brought it out on cross examination, and that is their defense, which we have a right to rebut. We don't have to defend a question of contributory negligence.

THE COURT: That is very true, if you hadn't gone into it I think I shall let you go ahead, but you may have another chance to put on other evidence, if you desire to. You not only asked the plaintiff, but you asked two or three other witnesses.

MR. CORKERY: We did that after they had brought it out upon their cross examination.

MR. KORTE: No. You introduced La Branch. It would be part of the main case, Your Honor, anyway.

THE COURT: I shall let you ask this question.

MR. CORKERY: Q. What was his condition as to being sober or not?

A. He was sober.

Q. I will ask you, Mr. Glover, if you had a talk with this boy some days after the accident, at the store, in which he stated to you that he was up at the store some distance away from the accident, and didn't see it?

THE COURT: Answer yes or no.

A. Yes, sir.

MR. CORKERY: That is all.

CROSS EXAMINATION by

MR. KORTE:

Q. Mr. Glover, Bart had some whiskey in him that day when you saw him?

A. Not that I know of.

Q. How many drinks did you see him take?

A. None at all.

Q. Then you weren't around where he was all the time, were you?

A. No, sir.

(Witness excused.)

Testimony closed.

DEFENDANT'S MOTION FOR INSTRUCTED
VERDICT.

MR. KORTE:

The Defendant at this time moves the Court to direct the jury to return a verdict for the defendant upon the following grounds:

1.

The evidence shows that the proximate cause of the accident was not the absence of the railing on the platform, but the light from the locomotive blinding the plaintiff, whereby he stumbled over some boxes or trunks that were on the platform, and caused him to be thrown from the platform.

2.

The evidence is beyond dispute that the plaintiff knew, as well as the defendant, the physical condition of the platform, was aware thereof at all times, and on account thereof assumed whatever risk there was because of the absence of a railing on the platform, or he was guilty of contributory negligence as a matter of law, under the conditions as he described them, he having full knowledge thereof.

3.

The evidence shows that the plaintiff was not in a fit condition to be accepted as a passenger, and had he tendered himself to the conductor the conductor would have had the right to reject him.

THE COURT:

The motion of the defendant for an instructed ver-

dict is denied and the defendant is allowed an exception.

Whereupon the testimony being closed Mr. Corkery addressed the jury on behalf of the plaintiff, and thereafter Mr. Korte addressed the jury on behalf of the defendant, and the final argument was made by Mr. Corkery on behalf of the plaintiff.

Whereupon the Court instructed the jury as follows:

THE COURT:

"Gentlemen of the jury, I hardly need say to you that when you go to your jury room and come to consider your verdict, you will lay aside all suggestions which merely appeal to your feelings of prejudice and pass on, or your emotions, regardless of from which side they may have come, in this case. Sometimes incidents inadvertently come into the trial of a case which really have no bearing upon it, and unless we are careful our judgment may be somewhat disturbed thereby. There have been some intimations, and perhaps insinuations, in this case, possibly from both sides, as to certain conditions, which the evidence would not warrant you in finding to exist. So that when you come to the real consideration of what your verdict should be you should be careful to confine that consideration to the evidence, all of the circumstances in evidence, and only the fair and legitimate inferences which may be drawn therefrom. After all, there is no reason for passion in the trial of this case. It is a plain issue. It is a question as to whether or not the defendant company was

negligent, and as to whether that negligence contributed to the plaintiff's injury; and, upon the other hand, the question whether or not he himself was in such a condition at the time, and conducted himself in such a way that he could not complain of the defendant's negligence, even though you should find that in some respects it was wanting in due care.

"As you have been advised, it is a case where one who claims to have been a passenger or intending passenger, which would be practically the same, brings suit against a common carrier, alleging that he, the passenger, was injured by reason of the failure of the carrier to discharge its obligations as such common carrier. Now, as I look at it, the first question for you to consider is whether or not there was a station at the point in question, in other words, whether it was such a place as the railroad company provided for the reception and discharge of passengers. Did it recognize this point as a place where a passenger could lawfully and properly seek entrance to its trains, and where a passenger who had already taken passage upon its trains could ask to be discharged. It isn't essential to constitute a railroad station that there be a depot, as it is sometimes called, or a station building. If the company designates a place as one where it will receive and discharge passengers, that becomes in the eyes of the law a station, a place where the public may seek entrance to the trains and also may demand to be discharged therefrom, under such reasonable rules and regulations as the railroad company may establish to govern the

conduct of its business at such point. Now if you find from the evidence that the company did designate this as a place, recognize it as a place, where it would receive and discharge passengers, it was bound to keep it in a reasonably safe condition, under instructions which I shall give you in more detail later on.

“The next question for you to determine is as to whether or not the plaintiff himself was, at the time of the injury, and just prior thereto, at this point, for the purpose, in good faith, of seeking passage upon the defendant company’s train. In other words, did he come there, and was he there, for the purpose of becoming a passenger or taking the train, as we put it. You will readily recognize the fact that the railroad company owes no duty to one who merely trespasses upon its right of way or upon its trains or depot grounds or platforms. People have no right to go upon a railroad platform or into a railroad depot merely for the purpose of visiting or loitering or sleeping or resting, or for any other purpose except to transact business with the railroad company. That is the purpose of a depot, and that is the purpose of a platform about a depot. So that unless you find that the plaintiff was there at the time in question for the purpose of seeking passage upon the defendant company’s trains you need go no further, because he could not recover. If he fell off the platform, that was a chance he took in going there for his own pleasure or convenience. If, upon the other hand, you find that he was there with the in-

tention of becoming a passenger, the next question in logical order is whether he was there in such condition as would justify him in demanding passage upon the train, and that involves the question whether or not he was drunk. The general rule is that a railroad company must receive all people who offer themselves for passage. That is subject to a good many exceptions. People who offer themselves to be carried upon railroad trains must comply with reasonable rules and regulations of the company; they must either pay the fare or be ready to pay it, the regular tariff rates, and in addition to that they must be in such condition as not to imperil their own lives or safety by becoming passengers, and they must also be in such condition as not to unduly disturb the peace of other passengers or endanger the lives or persons of other passengers. So it is that ordinarily an insane person cannot demand to be carried upon a passenger train. You can see why that would be, because such insane person might injure you, if you were a passenger, or injure some other person. So a man who is drunk may be refused passage for the same reason, for a drunken man, even if he is not dangerous, may use language or conduct himself in such a way as to disturb the peace and shock the sense of decency of other passengers, and one in that condition is not entitled to demand that he be received or recognized by a railroad company as a passenger. Now, of course, that doesn't mean that a railroad company can reject one merely because he has taken a drink of whiskey, or merely because you may detect

the intoxicant upon his breath, or merely because he may conduct himself a little different from other people. There must be some substantial reason; he must be in such a condition that there is reasonable ground to expect that he will either not be able to take care of himself, or in other words, that he himself will be in danger, or that he will endanger some other person, or that, as I have already stated, he will do things that will shock or disgust other people.

“Now if you should find from the evidence in this case that when the defendant came there upon the platform, and just about the time the accident occurred, he was so far intoxicated that, under the instructions which I have just given you, he had no right to demand passage upon the train, then he was not a passenger, and he could not demand that he be recognized as a passenger by the railroad company, and he would not have the rights of a passenger, and the company’s only obligation to him would be to avoid doing him any wilful wrong, that is, the company could not wilfully inflict an injury upon him because it found that he was upon the platform in that condition. But if he fell off the platform merely because there was no railing there, then if he was so drunk that he couldn’t demand passage the defendant company would not be responsible or liable.

“Now if upon these three questions you find in favor of the plaintiff, that is, you find that this was a station, you find that he came there in good faith to seek passage, and you find that he was not so far intoxicated that he wouldn’t have a right to demand

passage, then you should proceed further, and determine whether or not the defendant company was negligent in the respects alleged in the complaint, that is to say, was it negligent in not having a light at this point at the time in question, and further, in that it did not maintain a railing upon the back or along the back of this platform from which the plaintiff fell. I have to say to you that the mere absence of light would not in itself constitute actionable negligence under the circumstances of the case, but you may consider that question, or that fact, rather, if you find it to be a fact, and as I understand, it isn't disputed (that is, it isn't contended that there was a light there), you may consider the condition of the platform as to light or darkness, in considering the further fact that there was no railing or protection upon the back of this platform, for while you might find that neither the absence of a light nor the absence of the railing in itself was a sufficient cause for the accident and the injury, still if you find that the two conditions combining caused the injury, then you may further consider whether or not the existence of those two conditions, the absence of a light and the absence of a railing, whether these two concurring, constituted negligence on the part of the railway company. In other words, you may consider both facts and determine whether or not the two together constituted negligence. There is no precise measure, gentlemen, no yard stick, by which we can measure the conduct of a railroad company for the purpose of saying whether the particular act

or omission complained of does or does not constitute negligence. That is left to the jury, that question is left to the jury, under certain general rules and upon the application of certain general principles. Some of you have heard me say what this general rule is, that is, negligence, generally speaking, is the doing of some act which under the circumstances an ordinarily prudent person with due regard for the rights of others would not do, or the leaving undone of some thing which under the circumstances an ordinarily prudent person with due regard for the rights of others would do. Now that general principle applies to the railroad company, to a carrier. Of course, it acts through servants and agents and officers, etc., but generally speaking the acts of those agents are the acts of the company itself. Now in this case did the railroad company exercise ordinary care and prudence, having due regard for the rights and safety of passengers seeking passage or leaving their trains at this point, did it have due regard for the rights of these people in maintaining the platform without a railing and without a light? It was bound to use reasonable care to see that people who took passage there or who got off the train there did not suffer injury, and the question for you to determine is whether or not the defendant did use reasonable care, bearing in mind the standard of what reasonable men would ordinarily do, was the care which it exercised commensurate with the danger. Did it do what ordinarily reasonable men, ordinarily prudent men, would have done, having due regard for the rights and safety of

passengers? Now if you should find upon that question also in favor of the plaintiff, that is, if you find that the defendant didn't use reasonable care in these two respects, and further that such want of care was the cause of or contributed to the injury, you still have this further question before you could find in favor of the plaintiff: Did the defendant himself exercise reasonable care? Was the accident in whole or in part the result of his own contributory negligence, as we call it? Now his conduct is to be measured by the same general rule or principle as the defendant's. Under the circumstances, did he act as an ordinarily prudent, reasonable person would have acted, with regard to his own safety? If he was guilty of negligence, and that negligence contributed to his own injury, he cannot recover, even though the defendant may also have been guilty of some negligence contributing to the injury, and upon that point I have this further to say to you: Any evidence of the plaintiff's intoxication will be considered by you in determining whether or not he was thereby shown to be guilty of such contributory negligence as to bar a recovery in his favor. As I have already explained to you, intoxication alone is not a bar to his recovery. That is, a measure of intoxication might not debar him from seeking passage upon the train. That I have fully explained to you, already. So that a measure of intoxication would not bar his recovery, but you may consider his condition in that respect in determining whether or not he acted with reasonable care, for if he failed to exercise the ordi-

nary care which a reasonably careful, sober man would have exercised, then he cannot excuse his negligence by referring it to the fact that he was not able to take care of himself because of intoxication. So, generally upon that point, if you believe as jurors, from all the facts and circumstances in this case, that the plaintiff was intoxicated, and that the real and primary cause of his falling from the platform was due to a state of intoxication, then it would be your duty to return a verdict in favor of the defendant. The law will not permit one to voluntarily place himself in a state of intoxication and then recover damages for an injury sustained which was primarily induced or brought about by reason of such intoxication.

“Now if you find upon all of these points in favor of the plaintiff, that is, if you find he wasn’t guilty of negligence, and that the defendant was, the next question for you to consider is the damages which you will award to him. Here again there is no precise measure. The question is necessarily committed to the good sense of twelve men such as you are, acting as jurors. You are to consider that question as you consider other questions, dispassionately and fairly, with the purpose in good faith to award to him such reasonable damages as he has suffered. You may consider the pain, if any, which he suffered, and his loss of time. You may also consider such impairment if any you find, as is permanent with reference to his physical condition, and such pain, if any, as he will suffer in the future, all, of course, as a result of

this accident. You may also consider the amount that he has necessarily or reasonably paid out, or the expenses that he has incurred, on account of hospital and doctor's services. I have forgotten,—the maximum of that is how much? What is pleaded?"

MR. CORKERY:

"There was \$115.00 pleaded, and the balance would make \$150.00, which has since occurred. We pleaded \$115.00 and we will ask leave to amend. At the time the complaint was drawn it was only \$115.00 but will ask leave to amend so as to show the full amount."

THE COURT:

"Very well. You may amend to that extent. There was no objection to the evidence. So that the pleading as amended would state a maximum amount on these two grounds of doctor's bill and hospital, of \$265.00. That would be the maximum that you could allow upon that account.

"The burden of proof in this case, gentlemen, as in all civil cases, is upon him who alleges the existence of a certain fact. So in this case the burden was upon the plaintiff to show to you by a preponderance of the evidence all of the elements of the claim to which I have drawn your attention, with the exception of contributory negligence. That is, he was bound to show that he offered himself as a passenger, he was bound to show that the defendant Company was negligent, he was bound to show that negligence was the cause of the injury, and that he must show by a preponderance of the evidence. Upon the other

hand, the burden was upon the defendant of showing that he was guilty of contributory negligence, resulting in the accident or bearing upon the accident, and that burden is discharged only when the evidence seems to be of greater weight to you,—not necessarily the greater number of witnesses, but it must be more convincing, of a greater weight. Such is the meaning of the word.

“You are the sole judges of the issues of fact. I am leaving the determination of the facts entirely to you. That being your responsibility, it is also your right and duty to determine, to pass upon, the credibility of the witnesses and the weight to be given to their testimony. You will consider the interest which the witnesses have in the result of the trial, and all other facts and circumstances which, in the common experiences of life, you have learned, bear upon human testimony and tend to make it truthful and reliable, or, upon the other hand, tend to distort or color it.

“All of you must concur in finding a verdict. Two forms of verdict have been prepared. You will have no difficulty in using them. If you find in favor of the plaintiff the one will be used where a blank is left. If you find for the defendant you will use the one which is complete in itself.”

MR. CORKERY:

“If the Court please, the Court misunderstood the amount of the medical bills. We only claim \$150.00. The Court added them together. It is \$150.00 altogether.”

THE COURT:

"You will understand this correction then, gentlemen. I supposed it was \$150.00 in addition to the \$115.00. Counsel now advises me that the maximum claimed on account of both of these accounts is \$150.00 instead of \$265.00.

"Let the bailiff be sworn."

Thereupon the jury, having received the charge of the Court, retired to consider their verdict and thereafter returned into open court the following verdict:

"We, the jury impanelled in the above entitled cause, find for the Plaintiff and assess the damages to be recovered herein at the sum of \$7,500.00.

"MIKE SHINE, Foreman."

DEFENDANT'S LIST OF EXHIBITS.

Defendant's Exhibit 1 was a paper handed the witness La Branch on cross-examination for identification, but was not introduced in evidence.

Defendant's Exhibit 2 is a plat of the survey of the railroad of the defendant showing station at Herrick where the accident happened.

Defendant's Exhibit 3 is a daily record showing arrival and departure of trains at Marble Creek.

Thereafter, and before the time expired within which the defendant was required by law and the rules of the court to serve and deliver to the clerk its proposed Bill of Exceptions, an order was entered upon the written stipulation between Plaintiff and

Defendant extending the time within which the Defendant should serve and file its proposed Bill of Exceptions to the fifteenth day of August, 1917.

Now, in the furtherance of justice and that right may be done, the defendant presents the foregoing as its Bill of Exceptions in this cause, and prays that the same may be settled, allowed, signed and certified by the Judge, as provided by law, and filed as a Bill of Exceptions.

GEO. W. KORTE,
J. F. AILSHIE,
Attorneys for Defendant.

*In the District Court of the United States, for the
District of Idaho, Northern Division.*

BARTHOLOMEW CHAMBERLAIN,
Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
WAY COMPANY, a corporation,
Defendant.

No. 677.

ORDER SETTLING BILL OF EXCEPTIONS.

Now, on this thirty-first day of August, 1917, the above case coming on for hearing on the application of the defendant to settled the Bill of Exceptions in said cause, the defendant appearing by George W. Korte, Esq., and J. F. Ailshie, Esq., its attorneys, and the plaintiff appearing by Messrs. Corkery & Corkery, his attorneys, and it appearing to the Court

that the defendant's proposed Bill of Exceptions was duly served on the attorneys for the plaintiff and filed with the clerk of this Court within the time provided by law and within the time allowed by the stipulation of the parties and the order of the Court extending such time, and that no amendments had been suggested thereto by the plaintiff excepting those which are incorporated in the foregoing Bill of Exceptions; and that the time for settling said Bill of Exceptions has not expired and the Court having duly allowed said proposed Bill of Exceptions; and it further appearing to the Court that said Bill of Exceptions contains all the material facts occurring in the trial of said cause, including the rulings of the Court, together with the exceptions thereto taken and allowed, and all material matters and things occurring upon the trial, except Exhibits introduced in evidence which are hereby made a part of the Bill of Exceptions and the clerk of this Court is hereby ordered and instructed to attach said Exhibits thereto.

Thereupon, upon motion of defendant's attorneys, it is hereby ordered that said proposed Bill of Exceptions with the amendments allowed by this Court, be and the same is hereby settled as a true Bill of Exceptions in said cause, and the same is hereby certified accordingly by the undersigned Judge of this Court who presided at the trial of said cause, as a true, full and correct Bill of Exceptions, and the clerk of this Court is hereby ordered to file the same as a record in said cause and transmit the same to the

Honorable Circuit Court of Appeals for the Ninth Circuit.

FRANK S. DIETRICH,
District Judge.

Lodged August 14, 1917.

Filed August 31, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

PETITION FOR WRIT OF ERROR.

The defendant, Chicago, Milwaukee & St. Paul Railway Company, a corporation, feeling itself aggrieved by the verdict of the jury and the judgment entered thereon in the above entitled cause, comes now by its attorneys and petitions this Honorable Court for an order allowing it to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and approved, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that the judgment heretofore rendered be superseded and stayed, pending the determination of said cause in the Honorable Circuit Court of Appeals.

GEO. W. KORTE,
J. F. AILSHIE,
Attorneys for Defendant.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

ASSIGNMENTS OF ERROR.

Comes now the defendant, Chicago, Milwaukee & St. Paul Railway Company, and files the following assignments of error upon which it will rely for its prosecution of the writ of error in the above entitled matter in the United States Circuit Court of Appeals for the Ninth Circuit, for relief from the judgment rendered in said cause:

I.

The Court erred in overruling the objections of the defendant to the following questions asked the witness La Branch, and in permitting said witness to answer said questions, as follows:

MR. CORKERY: Q. State what statement he (Chamberlain) made in that connection about going to the train.

MR. KORTE: We object, as hearsay, as self-serving and incompetent.

THE COURT: Objection overruled. You may have an exception.

Q. What did he say as he shook hands with you?

A. He said he was going on the train with me as far as Plummer Junction.

II.

The Court erred in overruling defendant's objections to the following questions asked plaintiff Chamberlain, when on the witness stand, and in permitting said witness to answer said questions, which questions, objections and answers are as follows:

MR. CORKERY: Q. I will ask you if any money was paid to the boys on the speeder, or either of them, that testified here, on account of the passage of yourself or the other men from Marble Creek to Herrick?

MR. KORTE: Objection to this as not on rebuttal. They were bound by the statement of the witnesses when they said that nothing was given to them, and it raises a collateral issue which we are not prepared to meet. It is immaterial. It is on an immaterial issue.

THE COURT: No, I said they had to be bound by the witnesses' statement merely as to the general custom, but as to what occurred at this particular time I think they may rebut that.

MR. KORTE: The issue as to whether or not there was money paid by the men, or by these men, to the men operating the speeder was injected on cross-examination.

THE COURT: The objection is overruled. Exception allowed.

III.

The Court erred in overruling or denying defendant's motion and request for an instructed verdict in favor of defendant, upon the conclusion of the trial and after all the evidence had been submitted in behalf of both plaintiff and defendant.

IV.

The Court erred in denying defendant's petition for a new trial for the reason that there is no substantial evidence to support the verdict and the verdict discloses prejudice, bias and passion on the part

of the jury against defendant, in that there was no evidence whatever showing any loss to plaintiff of wages or earning power or any employment in which plaintiff was engaged or any wage or salary he was receiving, and that the excessive character of the verdict itself disclosed prejudice and passion of the jury and was impliedly recognized by the Court in conditionally granting a new trial unless plaintiff consented to a reduction of the judgment one-third, or \$2,500.00.

SPECIFICATIONS WHERE EVIDENCE IS INSUFFICIENT TO JUSTIFY A VERDICT, OR TO SUPPORT THE VERDICT HEREIN.

I.

There is no evidence in the record, and there was no evidence given which will support or justify the verdict herein, or any verdict against the defendant for any sum whatever.

II.

The overwhelming weight of the evidence discloses, and is to the effect that the plaintiff, at the time he went upon the platform where he claims to have been injured, was not an intended passenger but was a trespasser, and was not entitled to the rights of a passenger.

III.

The evidence clearly shows, without substantial dispute or conflict, that the plaintiff's injury was the result of a risk of which he was fully aware and of which he had as much knowledge as the defendant,

and a risk which he voluntarily assumed, and that said injury resulted in whole or in part from the plaintiff's own reckless misconduct. That plaintiff admitted and so testified that he had been on said platform repeatedly and well knew there was no rail around the same, and that he knew where and at what points said platform was unsafe.

IV.

The evidence clearly shows that the proximate cause of plaintiff's fall from the platform was not the absence of the railing but the result of his stumbling against, or walking around or against, the box or trunk on the platform, and his attempt to walk and move upon said platform after, as he testified himself, he was blinded from the light of the locomotive, and that both his complaint and the evidence discloses that there was no charge of negligence or lack of diligence on the part of the defendant company in maintaining a headlight on the locomotive, or the box or trunk on the platform. The plaintiff admits that he well knew the condition of the platform and that knowing it as he did he attempted to walk around the trunk or box on the far side thereof from the track and on the unsafe side of the platform while the light from the locomotive was shining in his face.

V.

The evidence clearly discloses that the plaintiff was guilty of contributory negligence in that he was in a state of voluntary intoxication at the time of the accident, and that the accident resulted primarily

from such intoxication and at a time when he was loitering or loafing on said platform and while he was exercising no care or diligence for his own safety and at a time when he admits he was attempting to move in a way that discloses his acts to be grossly negligent and careless. There is no evidence whatever showing that the plaintiff has sustained any damage to his earning powers or his capacity to labor and earn wages or compensation the same now as he could before the accident, and the evidence wholly fails to show that he has lost any time whatever on account of the alleged injury since he left the hospital. There is no scintilla of evidence that he cannot earn as much now at any employment or business he ever follows as he ever could earn, and that no financial loss whatever is shown except his hospital fees and expenses.

VI.

The evidence wholly fails to show any actual or substantial damages, or any continued pain or suffering, or any special damages of any kind excepting the sum of \$150 which plaintiff claims to have paid out for medical aid and hospital charges, and the amount of the verdict returned is without support in the evidence and clearly discloses prejudice, bias and passion and a lack of unbiased and deliberate judgment upon the part of the jurors. That the excessive character of said verdict, unsupported by any evidence of plaintiff's occupation or business, or loss of wages or earning power, discloses on its face prejudice, passion and bias on the part of the jury against

defendant, and that the excessive character of said verdict and the prejudice and bias of the jury was impliedly if not directly and positively noticed by the Court in making its order herein conditionally denying defendant's petition for a new trial.

WHEREFORE, defendant, plaintiff in error, prays that the judgment of the Honorable District Court of the United States for the District of Idaho, Northern Division, be reversed and that such directions be given that full force and efficiency may inure to the defendant by reason of its defense of said cause.

GEO. W. KORTE,

J. F. AILSHIE,

Attorneys for Defendant.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

ORDER ALLOWING WRIT OF ERROR.

Upon motion of George W. Korte and J. F. Ailshie for the above named defendant, and upon filing a petition for a writ of error and assignment of errors as required by law, it is hereby

ORDERED that a writ of error be and the same is hereby allowed to have reviewed in the Honorable United States Circuit Court of Appeals for the Ninth Circuit the judgment entered herein; and it is further ordered that the amount of bond on said writ of error is hereby fixed at the sum of Six Thousand

(\$6,000.00) Dollars, to be given by the defendant, and on the giving of said bond the judgment heretofore rendered will be superseded pending the hearing of said cause in the Honorable Circuit Court of Appeals.

IN WITNESS WHEREOF the above order is granted and allowed this twentieth day of November, A. D. 1917.

FRANK S. DIETRICH,
Judge.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

Service and receipt of true copy of each of the following described papers is hereby acknowledged and admitted this twentieth day of November, 1917.

Assignments of Error.

Petition for Writ of Error.

Order allowing Writ of Error.

Bond on Writ of Error.

Writ of Error.

Order to transmit Exhibits.

Praecipe.

R. B. NORRIS,
ROBERT CORKERY,
Attorneys for Plaintiff and
Defendant in Error.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

STIPULATION AS TO SUPERSEDEAS BOND.

It is hereby stipulated and agreed by and between the respective parties, through their attorneys of record, that the amount of the supersedeas bond required to be filed upon the allowance of the writ of error herein may be fixed by the Court in the sum of Six Thouusand (\$6,000.00) Dollars.

Dated this twenty-third day of October, A. D. 1917.

R. B. NORRIS,
CORKERY & CORKERY,
Attorneys for Plaintiff.

GEO. W. KORTE,
J. F. AILSHIE,
Attorneys for Defendant.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS, that we, Chicago, Milwaukee & St. Paul Railway Company, a corporation, as principal, and National Surety Company, a corporation organized under the laws of the State of New York and authorized to transact business as surety in the State of Idaho, are held and firmly bound unto Bartholomew Chamber-

lain, plaintiff in the above action, in the sum of Six Thousand (\$6,000.00) Dollars for which sum well and truly to be paid to said Bartholomew Chamberlain and his administrator, executor or assign, we bind ourselves, our, and each of our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this twentieth day of November, A. D. 1917.

The condition of this obligation is such that whereas, the above named defendant, Chicago, Milwaukee & St. Paul Railway Company, a corporation, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above entitled cause made and entered by the District Court of the United States for the District of Idaho, Northern Division, and,

WHEREAS, the said Chicago, Milwaukee & St. Paul Railway Company, a corporation, desires to supersede said judgment and stay the issuance of execution thereon pending the determination of said cause in the said United States Circuit Court of Appeals for the Ninth Circuit;

NOW, THEREFORE, the condition of this obligation is such that if the above named Chicago, Milwaukee & St. Paul Railway Company, a corporation, shall prosecute said writ of error to effect and pay all necessary costs and damages awarded against it, including the full amount of said judgment and interest, if it shall fail to make good its plea, then this ob-

ligation shall be void, else to remain in full force and virtue.

CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY,

By Geo. W. Korte, Its Attorney.

NATIONAL SURETY COMPANY,

By Geo. W. Allen, Resident Vice President.

Signature unintelligible,

Resident Assistant Secretary.

(Corporate Seal.)

APPROVED this twentieth day of November, A.
D. 1917.

FRANK S. DIETRICH,
Judge.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

ORDER TO TRANSMIT EXHIBITS.

It is hereby ordered that the exhibits used in the trial of the above entitled cause in the United States District Court be, by the clerk of said Court, transmitted with a transcript on appeal to the United States Circuit Court of Appeals at San Francisco, California.

Done in open Court this twentieth day of November, A. D. 1917.

FRANK S. DIETRICH, Judge.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 677.

PRAECIPE FOR TRANSCRIPT OF RECORD.
TO THE CLERK OF THE ABOVE NAMED
COURT:

You will please prepare a transcript, and send to the clerk of the Circuit Court of Appeals, of the following records, to-wit:

Notice of Petition for Removal.

Petition for Removal.

Bond for Removal.

Order Removing Cause to Federal Court.

Complaint.

Answer.

Verdict of Jury.

Judgment.

Petition for New Trial.

Order Modifying the Judgment and Denying Petition for New Trial.

Stipulation extending Time for Filing and Signing Bill of Exceptions to August 15, 1917.

Stipulation extending time for Filing and Signing Bill of Exceptions to September 1, 1917.

Bill of Exceptions.

Petition for Writ of Error.

Assignments of Error.

Order allowing Writ of Error.

Writ of Error.

Stipulation fixing the amount of Supersedeas Bond.

Bond.

Citation.

Order to Transmit Exhibits.

Praecipe for Transcript of Record.

GEO. W. KORTE,

J. F. AILSHIE,

Attorneys for Defendant.

Filed November 20, 1917.

W. D. McReynolds, Clerk.

*United States Circuit Court of Appeals
for the Ninth Circuit.*

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
WAY COMPANY,

Plaintiff in Error,

vs.

BARTHOLOMEW CHAMBERLAIN,

Defendant in Error.

No. 677.

WRIT OF ERROR.

UNITED STATES OF AMERICA,—ss.

The President of the United States to the Honorable,
the Judge of the District Court of the United
States for the District of Idaho, Northern Divi-
sion, GREETING:

Because in the records and proceedings, as also in
the rendition of the judgment, of a plea which is in
the said District Court before you, or some of you, be-
tween the Chicago, Milwaukee & St. Paul Railway
Company, plaintiff in error, and Bartholomew
Chamberlain, defendant in error, a manifest error
hath happened to the great damage of the said Chi-

cago, Milwaukee & St. Paul Railway Company, a corporation, the plaintiff in error, as by its petition herein appears:

That, being willing that error, if any, hath happened, should be duly corrected and full and speedy justice be done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco in the State of California within thirty days from the date hereof, in the said Circuit Court of Appeals, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause to be done further therein to correct that error, what of right and according to law and customs of the United States should be done.

WITNESS the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States and the seal of this Court, this twentieth day of November, in the year of our Lord one thousand nine hundred and seventeen.

W. D. McREYNOLDS,
Clerk of the District Court of the
United States for the District of
Idaho, Northern Division.

(Seal.)

Allowed by

FRANK S. DIETRICH, District Judge.

Service of the within writ of error and receipt of
a copy thereof is hereby acknowledged this.....
day of....., A. D. 1917.

Attorneys or Defendant in Error.

Filed Nov. 20, 1917.

W. D. McREYNOLDS, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit*

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
WAY COMPANY,

Plaintiff in Error,

vs.

BARTHOLOMEW CHAMBERLAIN,

Defendant in Error.

No. 677.

CITATION.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America to
Bartholomew Chamberlain, Defendant in Error,
GREETING:

You are cited and admonished to be and appear in
the United States Circuit Court of Appeals for the
Ninth Circuit at the court room of said court in the
city of San Francisco and State of California, within
thirty days from the date of this citation, pursuant
to a writ of error on file in the clerk's office of the Dis-
trict Court of the United States in and for the Dis-

trict of Idaho, Northern Division, wherein the Chicago, Milwaukee & St. Paul Railway Company, a corporation, is plaintiff in error, and Bartholomew Chamberlain is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Edward Douglas White, Chief Justice of the United States, this twentieth day of November, A. D. 1917.

FRANK S. DIETRICH,
United States District Judge.

(Seal.)

Attest:

W. D. McReynolds, Clerk.

Service of the foregoing Citation admitted and a true copy thereof received this twentieth day of November, A. D. 1917.

R. B. NORRIS,
ROBERT CORKERY,
Attorneys for Defendant in Error.

Filed Nov. 20, 1917.

W. D. McREYNOLDS, Clerk.

RETURN TO WRIT OF ERROR.

And thereupon it is ordered by the court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United

States Circuit Court of Appeals for the Ninth Circuit and the same is transmitted accordingly.

W. D. McREYNOLDS,

(Seal)

Clerk.

(Title of Court and Cause.)

No. 677.

CLERK'S CERTIFICATE.

United States of America,
District of Idaho,—ss.

I, W. D. McReynolds, clerk of the United States District Court for the District of Idaho, Northern Division, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, in pursuance of the command of the writ of error herein, there is herewith transmitted transcript of pages from 1 to 212, inclusive, being a full, true and correct copy of the record papers and other proceedings in the above entitled cause, as called for by the plaintiff in error in its Praecipe as the same appears thereon, original records and files of said Court in my possession as such clerk; I further certify and return that I have annexed to said transcript and included in said paging the original writ of error and citation in said cause.

I further certify that I herewith transmit all the original Exhibits on file in said action in pursuance to the order of this Court.

I further certify that the fees of the Clerk of this

Court for preparing, printing and certifying said transcript on appeal amount to the sum of \$246.20, and that the same have been paid in full by the plaintiff in error, the Chicago, Milwaukee & St. Paul Railway Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court in said district, this 14th day of December A. D. 1917.

W. D. McREYNOLDS,

(Seal)

Clerk.